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CURRENT TOPICS

Power from the Sea

IT would be wrong, even in a journal as esoteric as this, to allow last week's announcement from Harwell to pass completely unnoticed. So far as we can ascertain, the invention of the internal combustion engine, of the aeroplane and of radio and television, to name only some of man's achievements during the past century, received no publicity in these columns. The steam engine and the wheel were before our time. Such is the strain of maintaining the standard of living to which we as a profession like to be accustomed that few of us now practising will survive to be warmed by electric power derived from sea water. We can only speculate about whether, when that happy day arrives, there will still be clerks to magistrates taking down depositions in longhand and conveyancers patiently deducing title from roots planted this year.

The Parker Tribunal

NEVER in the short history of the tribunals appointed under the Tribunals of Inquiry (Evidence) Act, 1921, has there been a more resonant anti-climax nor at the same time more substantial justification for the tribunal's appointment than the Report of the Bank Rate Tribunal. This is, or should be, a matter for general satisfaction. There is a tendency to blame the Opposition for all the fuss and certainly they cannot escape their share of the blame, if blame there be: in our view the responsibility is wider and deeper. The allegations were founded on rumour. Few of us can truthfully say that we have never discussed or passed on a rumour without checking it. We think that the tribunal were a little hard on a lady witness when they said that " she made what was intended to be a sensational remark in order to draw attention to herself." This is a common human failing, shared by men and women, and those responsible for the distress which has been caused to numerous individuals are all who have fanned instead of extinguished rumour and gossip.

> Rumour is a pipe
> Blown by surmises, jealousies, conjectures,
> And of so easy and so plain a stop
> That the blunt monster with uncounted heads,
> The still-discordant wavering multitude,
> Can play upon it.

Most of us would be improved by some self-denial and by more readiness to place the best instead of the worst construction on the actions of others.

CONTENTS

The Legal Aspects

THE inquisitorial system is foreign to this country. The only examples of it in our judicial structure are the coroners' courts and the tribunals set up under the 1921 Act. It is impossible to suggest any effective substitute for these tribunals but we wonder whether it is necessary for the ATTORNEY-GENERAL to play the part he does. So deep-rooted is the English conception of a *lis inter partes* that it has become customary for the Attorney-General to take a prominent part in and to bring witnesses before the tribunals. Perhaps it would be better if, contrary to the ordinary practice in the courts, the members of the tribunal were to bear the main burden of examining and cross-examining witnesses, leaving the Attorney-General with the secondary role of filling in the gaps. There were passages during the hearings before the Parker Tribunal when the Attorney-General resembled prosecuting counsel. This was equally true of Sir HARTLEY SHAWCROSS before the Lynskey Tribunal, and the fact that the rumours in the latter case were well founded and in the former baseless does not affect the issue. It is not surprising that the one constitutional question raised, but not answered, in the Report is the position of part-time directors of the Bank of England whose public duty may sometimes conflict with their private financial interests. There is some political pressure in favour of requiring all directors of the Bank to relinquish their other commercial interests. In our opinion this would be wrong. The Bank must have at its disposal the widest possible range of experience. We should not be deterred by the theoretical illogicality of the arrangement. There are in the British constitution plenty of examples of illogicality where the integrity and good sense of those who work it overcome the theoretical obstacles. The tribunal's report makes it abundantly clear that there are still large quantities of integrity and good sense at our disposal.

Diminished Responsibility

SINCE our observations on this subject appeared last week, the HOME SECRETARY has decided to recommend a reprieve for John Francis Spriggs. One of the objects of the Homicide Act, 1957, was to define so far as possible in legal terms the type of murder for which the death penalty would in fact be executed and thus to diminish the number of cases in which sentence of death would be pronounced although everyone knew it would never be carried out. This being the first occasion since the passing of the Act on which it has been found necessary to invoke the prerogative of mercy, it is too early to judge whether the Act has been successful: certainly no one ever expected that it would be infallible. The circumstances of this case, however, in our opinion underline the present unsatisfactory and anomalous arrangement whereby a convicted person has no absolute right of appeal to the House of Lords. We think that this was a case where the ATTORNEY-GENERAL would have been right to grant his fiat, and once again it raises the question whether it would not be fairer to everyone to transfer either to the Court of Criminal Appeal or to the House of Lords the onerous duty of granting or withholding leave to appeal.

Military Use of Land

THE Land Powers (Defence) Bill, read for the first time in the Commons on 23rd January, is a Government measure designed to substitute for the existing powers of the Crown with regard to the use of land for defence purposes a new system which will safeguard the interests of landowners, farmers and other persons in accordance with the spirit of the recommendations of the Franks Committee on Administrative Tribunals. The Bill provides that when major manœuvres are to be held, a draft order in council setting out the area to be affected must be drawn up and laid before Parliament. Two months notice must be given to the public affected, and an affirmative resolution must be carried in Parliament before the manœuvres can take place. The order, when passed, will be sent to a Military Manœuvres Commission, who will see that damage and disturbance are avoided. The chairman will be appointed by the Lord Chancellor, and other members will be appointed by the various interests affected, including the Secretary of State for War. There must be at least one meeting of the commission in public in each case, and it must hear objections and make recommendations. The Secretary of State for War is to have a final right to insist that a given area should be used, and a copy of his variations of the commission's findings must be laid before Parliament and published at least three months before the manœuvres begin. The Bill gives a right of appeal to an independent arbitrator appointed by the Lord Chancellor, where a minor manœuvre would make free use of private land. The Postmaster-General is to be given permanent powers for the compulsory acquisition of land to enable him to provide defence communications.

The Judicial Committee Rules, 1957

ON 1st February, 1958, there come into force new Judicial Committee Rules, which will replace the existing 1925 Rules. The new rules substantially re-enact the effect of the existing rules as amended, and effect a number of changes. The records of cases may in future be duplicated instead of being printed. A person will be able to sue *in forma pauperis* when he has less than £100 in the world instead of £30 as formerly. The council office fees, other than the taxing fee, are to be increased by 25 per cent., and the taxing fee, at present at the rate of 2½ per cent. up to £300 and thereafter 1 per cent., is to be at a flat rate of 2½ per cent.

Stable House Prices

THE *Occasional Bulletin* for January, issued by the Co-operative Permanent Building Society, contains figures showing that the prices of houses sold with vacant possession in Great Britain remained remarkably stable in 1957. Taking the year as a whole, houses sold for under £1,500 rose in price by about 3 per cent., whereas those sold for over £2,500 declined by 1 per cent. No change was recorded in prices of houses sold between these two ranges. The upward movement in house prices which persisted throughout 1955 and 1956 continued during the first six months of 1957, when house prices on average rose by almost 1 per cent. In the second half of the year, however, prices on average drifted very slightly downwards and by the end of the year they were little higher than at the end of 1956. At the end of 1957 the general level of house prices was about three and a quarter times higher than in 1939. It was thus about 9 per cent. higher than the low point reached at the end of 1954 and only very slightly below the peak post-war level prevailing at the end of 1951. The Society's index of house-building costs rose by approximately 3 per cent. during 1957. This compares with a rise of about 5 per cent. in each of the two previous years.

NOTES ON AN OCCUPIER'S LIABILITY—II

Liability to visitors

THE former categories of invitee and licensee have been abolished by the statute in so far as they may have invoked different rules of liability, but the same rules exist to decide who is a visitor to an occupier. The duty owed is the common duty of care, which is expressed in s. 2 (2) of the Occupier's Liability Act, 1957, as a duty "to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose for which he is invited or permitted by the occupier to be there."

The leading case on visitors is *Indermaur* v. *Dames* (1866), L.R. 1 C.P. 274, where the plaintiff, a gasfitter, fell through an unfenced shaft on the defendant's premises, which he was visiting at the request of his employer, who had a contract with the defendant concerning a gas-regulator. The plaintiff was in no way careless. The law was stated as follows: "We consider it settled law that he, using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger which he knows or ought to know . . ." This passage continues with the words: ". . . where there is evidence of neglect, the question whether such reasonable care has been taken by notice, lighting, guarding or otherwise, and whether there was contributory negligence in the sufferer must be determined by a jury as a matter of fact," but the House of Lords in *London Graving Dock* v. *Horton* [1951] A.C. 737 held that those latter words formed no part of the rule and were merely indications of some of the ways in which the defendant may escape liability.

We are not now concerned to pursue the further points in the latter case since the duty under the Act is differently worded. For example, in the *London Graving Dock* case there was discussion of the meaning of "unusual danger," which formed part of the rule in *Indermaur* v. *Dames*, but those words do not appear in the new rule, which instead refers to a duty "to see that the visitor will be reasonably safe in using the premises for the purpose for which he is invited." All the arguments that appear in cases subsequent to *Indermaur* v. *Dames* concerning "unusual dangers," "concealed dangers," "traps" and so on are now of little more than historic significance. As stated in the previous article, the *London Graving Dock* case would not be decided in the same way to-day under the Act.

Indermaur v. *Dames* would, there is no doubt, be decided the same way under the Act and so would *Fairman* v. *Perpetual Investment Building Society* [1923] A.C. 74. That case and *Jacobs* v. *L.C.C.* [1950] A.C. 361 were important on the question who is a licensee and who an invitee, so that to-day their importance has shrunk to very small proportions—they now only serve the purpose of illustrating what is negligent conduct on the part of an occupier or a visitor. Thus, in *Fairman's* case the plaintiff fell down the common staircase of a block of flats where she lodged with her sister (whose husband was the tenant) and was injured. She sued the landlord but it was held that though the stairs, which were constructed of reinforced concrete, were worn so that part of the metal reinforcement was exposed, nevertheless the landlord had not been negligent in not having had the stairs repaired and that the stairs were not dangerous. Had the plaintiff exercised normal care she would have seen the depression (in which she caught her heel) and could have avoided falling. Consequently, she failed in her action.

Fairman's case is useful on the question what is dangerous, and that question is, of course, still material, since if premises are dangerous the occupier cannot have fulfilled the duty of care under the Act. It is clear that one cannot necessarily say of any premises: "These premises are dangerous" or "These premises are safe," for the question whether premises are dangerous or not depends among other things on the knowledge of the person using them. This does not make the test subjective, however, because the law may impute knowledge to a person which he has not actually got but would have had if he had used the powers of observation to be attributed to a "reasonable man." Thus, we may ask whether a person who falls down stairs has been there before. In *Fairman's* case it was not immaterial that the plaintiff had lived at the flat some considerable time and used the stairs frequently in consequence.

Let us take an imaginary block of flats with a common staircase of wood, and suppose that *A*, a tenant, is about to move out and *B*, the new tenant, is moving in. *C*, who is a furniture remover's foreman, whilst getting *A's* goods down the stairs, drops a bronze bust of Queen Victoria down the stairs (occupied by *D*, the landlord) and it goes through the sixth step making a hole in one half of the step. Is the step dangerous? To answer this question we must consider the individuals involved, thus:—

(*a*) So far as *C* is concerned, it is not dangerous, for he made the hole. Even in the dark he will be expected to look for and avoid the hole.

(*b*) So far as *A* is concerned, the stairs are dangerous until he is told of the hole, for he has used the stairs frequently and is entitled to expect that there is no hole. But in broad daylight he might not be able to complain, depending on where the hole is, how big it is and whether he ought to have seen it. If he had used the stairs the same morning before the hole appeared he might be able to make a claim if injured, on the basis of being taken by surprise.

(*c*) So far as *B* is concerned, the hole is not quite so dangerous if he has never visited the premises before, or only perhaps on one occasion, because being less familiar with the premises he has no particular grounds to expect safety. Nevertheless, if the hole was not easily observable, or if the stairs were not properly lighted, he will be able to claim.

(*d*) So far as *D* is concerned, is he liable for any damage? This will depend on various facts: whether there ought to be a caretaker in the circumstances or some person to see the state of the stairs from time to time, and what amount of time has elapsed since the occurrence and any injury to any person. Otherwise the foreman or his employer is liable if there was negligence, and no adequate warning or fencing-off of the danger was undertaken by them.

Independent contractors

The occupier may, as regards visitors, rely on the section of the Act relating to independent contractors, just as he may as regards persons entering under contract (subject, in the latter case, to the terms of the contract). Thus, *Haseldine* v. *Daw* [1941] 2 K.B. 343 and *Woodward* v. *Mayor of Hastings* [1945] 1 K.B. 174 we could confidently expect to be decided in the same way under the Act. Both are cases where the court accepted the same principle as is expressed in the Act, namely, that if an independent contractor has been employed

and he was a person who was selected with reasonable care and the occupier took reasonable steps to see that the work was done properly, the occupier will not be liable. In *Haseldine's* case the plaintiff was injured by a falling lift which had not been properly maintained by the engineers employed by the occupier. The occupier was not an engineer and there was little he could be expected to do to see that the work was done properly. But in *Woodward's* case the cause of the plaintiff's injury was a fall on some steps from which the person employed to clean them had failed to remove snow. One does not have to be an expert to see whether a step is unsafe from snow, and hence in that case reliance on the employment of an independent contractor was not sufficient to save the defendant from liability.

L. W. M.

THE MAINTENANCE ORDERS BILL

THIS Bill, which had its second reading in December, is designed to allow the registration in a magistrates' court of maintenance orders made by the High Court or county court and the registration in the High Court of like orders made by magistrates. The term "maintenance order" includes orders for alimony and maintenance made by the Divorce Court, orders under the Guardianship of Infants Acts, affiliation orders, contribution orders for the maintenance of children in the care of a local authority or otherwise being maintained by a local authority, and like orders made by Scottish and Northern Irish courts and courts of British dominions and colonies. Part II of the Bill provides for deductions from wages of men liable to pay under maintenance orders. The Bill has Government backing and consequently it may avoid the fate which befell the previous Bill introduced by Miss Joan Vickers, M.P., last session. Clause 18 of the Bill states that it shall come into operation on such date not earlier than 1st April, 1958, as the Home Secretary orders; this reference to April suggests that it will pass into law by the end of March, but there may be opposition to it from both sides of the House so only a brief outline of its provisions will be given in case it does not pass or is heavily amended.

Part I, which deals with registration, will enable orders of the Divorce Court to be enforced locally in the magistrates' court for the area where the man concerned lives. This was recommended by the Royal Commission on Marriage and Divorce and has obvious advantages; there may well be readers of this Journal who would consider enforcement by magistrates a more satisfactory way of securing payment in practice than the procedure now in use provides. The magistrates will have the same powers to enforce an order of the Divorce Court as they have for enforcing their own orders, which means, in fact, by committal to prison or deductions from wages. The Bill makes provision for the variation of High Court orders so registered and for cancellation of registration. It also provides for the registration of maintenance orders (as defined above) made by magistrates in the High Court or the county court. This will give to a wife or mother or council much wider powers of securing payment, in that garnishee proceedings and proceedings by way of charging orders on land or income will be available. An additional advantage of registration will be the wider powers of enforcing maintenance orders abroad. The Maintenance Orders (Facilities for Enforcement) Act, 1920, allows wife maintenance and guardianship orders to be registered in most British dominions and colonies, but there is no like provision for contribution and affiliation orders nor is there any provision for the enforcement of any orders made by magistrates in foreign countries. Registration in the High Court will presumably alter this position though it will not, at present, extend to many foreign countries.

Part II deals with the attachment of wages, and supporters of the Bill point to the position in Scotland where attachment of wages is used in about 1,500 cases a year and there are only, it is said, about thirty committals to prison for non-payment. It is proposed that, once a man is four weeks in arrear with payments under a maintenance order (as above defined), the court can require his employer to pay a proportion of his wages into court for the purpose of satisfying the maintenance order. The power will extend to all courts when enforcing maintenance orders. Magistrates may also exercise this power where a man is before them on committal proceedings under the Magistrates' Courts Act, 1952, s. 74. The Bill proposes that the attachment order should specify a limit below which a man's wages must not fall, i.e., so that he has enough for his own needs and that of any second family he may be maintaining. It is true that some men may give up their jobs rather than have their wages attached, but experience in magistrates' courts shows that there are a number of men who are just feckless about wages and who would continue in their employment and, indeed, probably welcome deductions by their employer. If the Bill is passed, the Government hope that this will lead to a fall in the prison population and also to payments to wives and children being kept up in a better way.

Further comment on the Bill and its provisions is reserved until it is passed. The idea of deductions from wages, it may be noted, was before Parliament in an Affiliation Orders Bill introduced in 1913, but the clause in question was not passed.

G.S.W.

"THE SOLICITORS' JOURNAL," 30th JANUARY, 1858

THE following is a selection of the questions set at The Law Society's Hilary Term Examination, as published in THE SOLICITORS' JOURNAL on the 30th January, 1858: *Equity:* What jurisdiction does the Court of Chancery exercise as regards the persons and property of infants? How can an infant sue in equity? State what formalities are required previously to instituting a suit by an infant and who is liable for costs in the event of failure. What steps can be taken to enforce an appearance in Chancery by a defendant who cannot be regularly served with a subpœna to appear and answer? What is the course of proceeding for transferring or paying trust funds into the Court of Chancery under the Trustees' Relief Act? What is the course of proceeding on the part of persons beneficially entitled to the funds referred to in the last question to enable them to get out the funds, and on whom must the notice be served? *Bankruptcy:* Describe the persons liable to the bankrupt laws. How is an adjudication in bankruptcy obtained and who is able to apply for it? What facts have to be proved in order to obtain an adjudication in bankruptcy? What stamps and office fees are payable in bankruptcy proceedings? At what stage of the bankruptcy proceedings can a certificate of conformity be obtained? What, if any, peculiar consequences ensue to a Member of the House of Commons who is declared bankrupt, and in what cases, and at what time, and under what statutes?

A Conveyancer's Diary

CHARITABLE GIFTS—WHEN PRACTICABLE

THERE is a very high degree of artificiality about the result of the decision in *Re Tacon* [1958] 2 W.L.R. 66, and p. 53, *ante*. But the decision follows logically on the decision in *Re Slevin* [1891] 2 Ch. 236, and that case established a principle which, one may fairly say, is now beyond cavil or question.

That principle is that if a gift is made to a charitable organisation or for the furtherance of a charitable purpose and at the time when the gift takes effect (which in the case of a gift by will is the date of the testator's death) the charitable organisation is in existence or the charitable purpose is practicable, the gift does not fail because subsequently the charitable organisation goes out of existence or the charitable purpose becomes impracticable. In the latter event, the subject-matter of the gift is applied either *cy-près* or for purposes directed by the Crown under the sign manual, according as the gift was made through the medium of a trust, or directly to the charity or for the charitable purpose. But that is by the way; the important thing, for the purpose of the kind of problem which arose in *Re Tacon* and the other cases to which I shall refer, is that the date at which the question whether the gift takes effect or not—the date, that is, when it has to be determined whether the charitable purpose is practicable or not—is the date of the testator's death, and not some future date, even when the gift is (to use a vague but comprehensive word) a future gift, e.g., a gift to *A* for life and after his death for the charitable purpose selected by the donor.

Date for ascertainment of practicability

It was argued in *Re Wright* [1954] Ch. 347 that the date when the practicability of a gift of the kind which I have just mentioned should be determined is not the date of the testator's death but the date of the death of the tenant for life. Owing to the change in the value of money between 1933, when the testator in that case died, and 1942, when the tenant for life died, the charitable purpose for which the testator had given the fund (the foundation of a convalescent home), which had been practicable in 1933, had become impracticable in 1942. But, as was pointed out in argument on behalf of the Attorney-General, arguing that the gift had not failed, if this argument were right the decision in *Re Slevin* would have been the other way. There the testator had given a legacy to an orphanage which was in existence at the date of the death but went out of existence before the legacy could be paid: held, that the legacy fell to be administered by the Crown, who would apply it for some analogous purpose. The *ratio* was that, as at the date of the death the charity was in existence, there was no lapse: compare the case of a gift to an individual, which does not lapse by the death of the legatee subsequently to the testator's death.

Form of inquiry

To turn from principle to practice, a practice grew up in the case of what I have called future gifts for charitable purposes to direct an inquiry in the form "whether it is now or will at any future time be possible to carry into execution" the particular trust. This was the form in which an inquiry was ordered in *Re Wright*. An order in this form put an impossible task on the master, but the practice was not changed until *Re White's Will Trusts* [1955] Ch. 188, in which case the court acceded to the argument of the next of kin that it could not be right to extend an inquiry into the possibility of carrying out the particular charitable purpose indicated by the testator "to an indefinite time in the future." An inquiry was ordered in these terms: whether at the date of the death of the testator it was practicable to carry the intentions of the testator into effect or whether at the said date there was any reasonable prospect that it would be practicable to do so at some future time.

Re Tacon

The result of the fusion of the principle established in *Re Slevin* and the practice as it has grown up in these later cases can be seen in *Re Tacon*, and it is not very satisfactory. A testator who died in 1922 settled his residuary estate on trust for his daughter for life with remainder to her children, and in the event of the failure of these trusts, as to a one-sixth share, for the purpose of setting up a convalescent hospital. The daughter died in 1952 without ever having been married. An inquiry was ordered as to the practicability of this last trust in the *Re White* form. The facts were that at the testator's death the value of a one-sixth share of residue was £16,500, which was enough for the charitable purpose, but that by the time of the daughter's death this figure had fallen to £10,000, which was then not enough for the purpose. At the date of the testator's death the value of the share in reversion on the interests of the daughter and her children was estimated at £2,400. Harman, J., held, in answer to the inquiry, that it was not at the testator's death practicable to carry into execution the trusts in respect of the convalescent hospital and that at that date there was no reasonable prospect that it would be practicable to do so at a future time, i.e., that there was an intestacy as to the share in question. This decision is not, so far as I know, reported, but although it was reversed by the Court of Appeal in the decision which is now under review, it seems unlikely that there could have been any difference on any matter of principle between the two courts: the probability is that they differed in their respective conclusions on the facts.

This decision, based on a number of far-reaching admissions, was as follows. The next of kin had argued that the only property available for the foundation of the charity at the date of the testator's death was the value of the reversionary interest—£2,400—and as this was clearly insufficient, the purpose was at the vital date impracticable and failed. But, said the Master of the Rolls (and I think that these few words epitomise the decision of the Court of Appeal), "the words of the inquiry mean what they say, namely, whether, at the date of the testator's death, there was any reasonable prospect . . . that at some future date this scheme would be 'practicable.' In my judgment, since the relevant proportion of the estate was then worth £16,500 or upwards, an amount . . . amply sufficient for the intended gift . . . the answer is clearly 'Yes'." And Romer, L.J., said: ". . . by the very terms of the bequest, it was not intended by the testator to come into operation until a distant, possibly a far distant, date . . . It is to the future, then, that the reasonable man in 1922 would have directed his mind in considering the practicability of the gift . . ."

The moral

I have already said that the principle on which these decisions depend is that enunciated in *Re Slevin*. The

difficulty of applying that principle to the question which has arisen in the cases of which *Re Tacon* is the latest example is that, in practice, the question which has to be decided does not ordinarily arise as a practical problem until the future date at which it was intended that the gift should become operative has arrived, but it has to be decided as at a date then past. As the Master of the Rolls said in *Re Tacon*, "the court must, as it were, put on 1922 spectacles" (1922 being the date of the testator's death). On that basis, a decision became no more than an intelligent guess; and that makes it all the more necessary, when gifts like this are drawn, to provide specifically for the destination of funds given for a charitable purpose at a future date in the event of that purpose becoming frustrate at that date.

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"1957"—A FOOTNOTE

A correspondent has pointed out an omission in the article in this "Diary" at p. 6, *ante*, in which I reviewed those events of the year 1957 of special interest to the property lawyer. I there dismissed s. 38 of the Finance Act, 1957, which had as its object the tightening up in several respects of the law relating to the imposition of estate duty on gifts *inter vivos*, as "of interest to the specialist only." My correspondent very rightly points out that one result of the change in the law made by s. 38 is that the charge to estate duty which formerly attached to the subject-matter of the gift, whether in the hands of the donee or of a transferee from the donee, will now attach to the property received by the donee in substitution for the property originally given, if the latter property is transferred to or dealt with in favour of a third person. The latter is now no longer concerned with the charge to estate duty. This is indeed an important change to anyone concerned with the title to property which has been comprised in a gift, and I am sorry that in my rather wide remarks on the Finance Act I should have omitted to refer specially to it.

"A B C"

Landlord and Tenant Notebook

TECHNICAL AND UNGRAMMATICAL LANGUAGE

WHEN reading the severe strictures upon a certain form of covenant to repair expressed by my fellow-contributor "Escrow" in our issue of 11th January last (*ante*, p. 27), I was reminded of the equally scathing comments made by Lawrence, J., and Mansfield, C.J., in *Marsden* v. *Reid* (1803), 3 Ea. 572, and *Le Cheminant* v. *Pearson* (1812), 4 Taunt. 367, on Lloyd's marine insurance policy. Ungrammatical and obscure are what that document was called: nevertheless, it has for centuries been the model on which marine insurance policies are framed.

Elucidation has been achieved at litigants' expense, and this is to be regretted. But "Escrow's" observations, primarily a criticism of the grammar used, but also demonstrating that obscurity may result from bad grammar, suggest consideration of a wider question. Draftsmen, and this applies to those concerned with statutes no less than to those engaged in phrasing deeds and other instruments, must often find themselves facing the problem whether plain language should be used and technical expressions avoided, or whether it is best to employ terms the meaning of which will be readily recognised by lawyers if not by laymen. Any tenancy agreement will contain illustrations.

Reddendum

Many a layman must have been puzzled by the sudden "yielding and paying" which introduces the reddendum in many a lease (though not as often as was once the case). "Escrow's" above-mentioned article was headed "Exercise in Parsing," and, if challenged to apply that process to the "yielding and paying," one might well have to think hard to find the subjects of the participles. Presumably, what is meant to be conveyed is that the land is to yield and the tenant to pay; a reminder of the principle that rent is, as Coke put it, "a certain profit reserved or arising out of lands or tenements whereunto the lessor may have recourse to distrain" (Co. Lit. 47*a*, 142*a*). Addicts of modern American slang might have the point explained to them by calling rent—reddendum—the landlord's rake-off. But it must be rare for tenants or landlords to worry much about this expression; ill-expressed though the intention may be, they are prepared to assume that it means that rent at the named figure is to be payable.

Quiet enjoyment

Again, I doubt whether any tenant is ever misled into thinking that if he finds the premises noisy and does not enjoy them he has, by reason of the express covenant for quiet enjoyment, a remedy against his landlord. The express covenant, he may less readily appreciate, usually qualifies the landlord's obligations (see, *inter alia Malzy* v. *Eichholz* [1916] 2 K.B. 308 (C.A.)), so that the tenant is better off without it. And, in connection with this question of technical language, it may be recalled that for a long time it was seriously doubted whether such a covenant was implied unless the instrument contained the magic word "demise." The point may be said to have been most thoroughly examined in *Markham* v. *Paget* [1908] 1 Ch. 697, in which Swinfen Eady, J., carefully reviewed the many existing decisions throwing light on the subject; it is of interest that in the case of one of them, *Bandy* v. *Cartwright* (1853), 22 L.J. Ex. 285, the learned judge relied partly on a report of counsel's argument urging, "There is no particular virtue in the word 'demise.'" *Markham* v. *Paget* actually decided that the use of the word "let" would suffice; but among the other authorities referred to mention was made of *Hall* v. *City of London Brewery Co., Ltd.* (1862), 2 B. & S. 737, in which Cockburn, C.J.'s view amounted to "the law is founded in good sense, and a covenant for quiet enjoyment is imported *ex vi termini*."

Forfeiture

The effect of a proviso for re-entry is well known to trained lawyers, but I sometimes wonder whether the usual form ought not to make some reference to the possibility of relief being granted, even if it only meant adding some such words as "subject to statutory rights of relief." For, as it reads, it cannot be said to entitle the landlord, on breach of condition, to re-enter the premises (which, incidentally, he may never have

been near); or to make the demise void. I am not, of course, thinking of those cases in which wishful thinking by the tenant causes him to misinterpret the proviso (I recently came across a letter in which one such tenant pointed out, in indignant terms, that his lease expressly provided that the rent was not payable till three weeks after the quarter-day). But some modification of the usual form seems desirable; and I might observe here that the inclusion of a proviso for re-entry is, owing to the considerable increase in security of tenure conferred by statute, important—from the landlord's point of view—in many cases in which such a provision would formerly have not been worth bothering about. A practitioner advising a client about the letting of, say, a garage to a tradesman (for housing the tenant's delivery van) on a weekly tenancy ought to urge him to insist on a forfeiture clause.

Statutes

Draftsmen of Acts of Parliament must often be confronted with the problem whether to use such language as is used by those whose rights and duties are affected, or such terms as have acquired a definite meaning when used by lawyers. Every now and again we hear some protest that such-and-such an enactment was intended to be understood by those concerned with its effects. This was not always so; if modern means of disseminating knowledge had been available in 1215, televising of the famous ceremony at Runnymede might have conveyed, to viewers, something of its significance; but if the text of Magna Carta had been read out probably the only result would have been criticism, by a few erudite listeners, of the broadcaster's pronunciation of Latin.

Nowadays, resort is sometimes had to the issue of an explanatory brochure (as in the case of the Rent Act, 1957); in particular, explanatory notes are appended to statutory instruments, and, in the case of "prescribed notices" (and of rent books), the inclusion of "Notes" is made compulsory. Whether this compromise meets the requirements may be arguable: the "Notes to be inserted in the various forms contained in the preceding schedules to these Regulations" by virtue of Sched. VI to the Rent Act, 1957, are not exactly light reading, though it can be said that some of them—e.g., Note 19 dealing with the sort of defects which ought reasonably to be remedied by a landlord—may adequately serve their purpose—if read.

Rather a different device was adopted by the Small Tenements Recovery Act, 1838. The first section—consisting of sentences the length, if not the grammar, of which makes for obscurity—creates the remedy; s. 2 deals with the service of notice of application on the ex-tenant (in the form set forth in the schedule) and includes the words: "... and the person serving the same shall read over the same to the person served or with whom the same shall be left as aforesaid, and *explain the purport and intent* thereof." A glance at the form will suggest that the Legislature of 1838 considered that even if the recipient were not illiterate he would be unable to understand it, and the enactment allows the process-server to adapt his language to circumstances. But, according to *Day* v. *Harris* (1953), 117 J.P. 313 (a case of a tenant suffering from delusions), the explanation need apparently only be such that a person of ordinary intelligence would understand it. As Dr. Johnson once put it: "Sir, I have given you an argument; I am not obliged to give you an understanding."

Farmers

Sometimes the trend is the other way. In *Jones* v. *Evans* [1923] 1 K.B. 12 (C.A.), in which it was held (by a majority) that the Agriculture Act, 1920, s. 18 (2)—"any such claim ... shall cease to be enforceable after the expiration of two months from the termination of the tenancy unless particulars thereof have been given by the landlord to the tenant"—did not call for a high degree of particularity. Bankes, L.J., went so far as to say that such particulars might be given by word of mouth. "The Legislature may have intentionally omitted a requirement that the particulars should be in writing ... the kinds of dispute to which the section relates would in many cases arise between men who did not engage legal advisers, but who employed to assist them tenant-farmers, agents, or valuers—persons who were very competent to deal with cases of this description, though not trained to draft legal documents." (The inclusion of "tenant-farmers" is remarkable; and not merely so because the claimant in the case was a landlord, for the provision applies to tenants as well.) But the Agricultural Holdings Act, 1948, now insists on writing: s. 70 (2).

Landlord by purchasing

Then, one of the consequences of "ordinary-meaning" interpretation which may bring a smile to the face of any "technical-meaning" enthusiast was illustrated by *Powell* v. *Cleland* [1948] 1 K.B. 262 (C.A.). The Rent, etc., Restrictions Act, 1933, Sched. I, para. (*h*), enables a landlord of controlled premises to seek possession on the ground that he reasonably requires it for himself, etc., provided he be not a landlord who "has become landlord by purchasing the dwelling-house or any interest therein after, etc." In *Epps* v. *Rothnie* [1945] K.B. 562 (C.A.), Scott, L.J., described the object of this provision in colloquial terms: "to protect a sitting tenant from having his house bought over his head," and in *Baker* v. *Lewis* [1947] 1 K.B. 186 (C.A.), Morton, L.J., said: "I am well aware that the word 'purchaser' and the words 'by purchase' have in certain contexts a technical meaning which is well known to all lawyers, but I am not aware of any case in which the words 'by purchasing a dwelling-house' have been given any technical meaning." The plaintiff in *Powell* v. *Cleland*, *supra*, desiring to occupy a dwelling-house let to the defendant on a quarterly tenancy by a third party, took a yearly tenancy from that third party (subject to the sitting tenant's rights) and thus attained his object: the definition of "purchaser" in the Law of Property Act, 1925, s. 205 (1) (xxi), did not apply to him.

Bliss from ignorance

I conclude by recalling a decision which shows what *can* be achieved without any regard for the niceties of grammar or the complexities of real property law. The agent for the owners of a house wrote the defendant in *Zimbler* v. *Abrahams* [1903] 1 K.B. 577 (C.A.) a letter saying: "I, the undersigned, S. Beron, have let to Mr. Abrahams the house situate at ... at a weekly rental of 23s., and I agree not to raise Mr. Abrahams any rent as long as he lives in the house and pays rent regularly. I shall not give him notice to quit. Any time Mr. Abrahams wishes to move out, I promise to return him the £6 he has paid me on taking possession of the house." That was in 1896; in 1901 the plaintiff landlords gave the tenant notice to quit and sued for possession, and found that the defendant was entitled to specific performance of an agreement to grant a lease for the term of his life.

R. B.

Mr. NORMAN HARPER, Recorder of Bradford, has been appointed a Judge of County Courts. He will be the Judge of Circuit 16 (Kingston-upon-Hull, etc.).

HERE AND THERE

NOT SO DULL

In most people's minds the solicitor's lot is pictured as a dull, colourless, dusty, chained-to-the-desk, nose-to-the-grindstone sort of life. No doubt some of the profession do live like that, but it makes them none the better as solicitors and generally the worse, unless they are avowed and dedicated specialists in the more abstruse abstractions of legal learning and drafting. The man who is to advise an infinite variety of human beings on their day-to-day problems, perils and catastrophes in an infinite variety of circumstances had better be a human being with wide human interests and wide human experience if he is to do any lasting and substantial good to his clients. The law, of course, he must know and (not using the term in a *sens péjoratif*) the tricks of the trade he must know, but it is not enough for him to be an electronic legal brain. Every now and then a solicitor publishes a book that is a self-portrait, and the best of them reveal vivid and interesting personalities. It is a curious paradox that often the reminiscences of members of the Bar, which is supposed to be by far the more glamorous branch of the legal profession, seem to reveal, out of court, a far more featureless way of life.

A CORNISH LAWYER

The point is illustrated by a recently published book of reminiscences of a Cornish solicitor, Mr. F. Lyde Caunter, entitled "Under the Surface." Let it be at once admitted that this is not another masterpiece like the "Confessions of an Uncommon Attorney." To give an exhibition of horsemanship you have to be a horseman. To produce a work of literature, you have to be a man of letters, either by the light of nature or by deliberate art. The late Reginald Hine was that, and Mr. Caunter is not. But everything a man does or says in some measure reveals him, and from these pages emerges the picture of a vigorous, versatile, courageous personality, one of those sharply-defined "characters" who are typical products of the varied counties of England. Here under the surface of a country solicitor with a conventional taste for golf was a remarkable personal achievement. Here was a tall, athletic young man so obviously healthy that the doctor who looked him over when he applied for a commission at the start of the first World War did not even bother to examine him, yet who within two months was struck down by anterior poliomyelitis and utterly disabled. But he fought back against this treacherous new enemy, passing his final examination as a solicitor in time to succeed to the family practice on the death of his father in 1918; a practice descending from his grandfather, who had migrated from Devon to Cornwall to serve his articles at Liskeard. He made an extraordinary physical recovery too, and became a vigorous and skilful shark catcher, an acknowledged master of the strenuously exacting art of playing and vanquishing monsters eight feet long. His enthusiasms are as diverse as music and mining, and he has displayed an unwearied zeal and local patriotism in urging the due exploitation of the neglected minerals of his own county.

STAFF AND CLIENTS

Amid so many general interests, the recollections of his mere legal activities receive relatively little prominence. Among them there is a particularly attractive portrait of a faithful old clerk, white and bearded and a devout Plymouth Brother, who, after young Caunter had succeeded his father, utterly inexperienced and with no partner to support him, was found one night by the caretaker after the staff had gone home, kneeling in the office praying for the success of his new employer. Such fidelity gives continuity to these deep-rooted old firms, and the author tells how "two most excellent and efficient girls who entered my office during World War I are still hard at it after forty years, full of knowledge of trust accounts and abstracts of title and, what is more important, taking a very real interest in those things and the people involved." And what people some of them were. One old lady, on her death, left her executors the fantastic task of hunting for golden sovereigns in every conceivable nook and cranny of her home. Wrapped up in brown paper parcels, stowed away in drawers and cupboards, was £40,000 in gold. There was an old farmer who, on his ninety-second birthday, walked two miles from his farm to take a train for Liskeard and another mile, after arriving there, to sign his will at the author's office. Asked to what he attributed his great age, he replied: "Oh, sir, I used to eat cherries by the dozen and never discarded the stones." As often happens with books of this sort, there are hints of byways which one longs to see fully explored. There is mention of one of the author's great-great-grandfathers who, though he had held a military commission, was later vicar of Totnes and whose son, pursuing a military career in earnest, went to the Peninsular War at the age of twenty and wrote letters home containing "amusing accounts of the army's progress, of Lord Wellington's hounds, which, as he puts it, knocked up wolves in high style; he describes the battle of Salamanca, the march on Madrid and the arrival of the army in August, 1812, amid the rejoicings of the people." How one would like to see those letters properly edited and published. Then there is a terrific blood-and-marlin-spike narrative of another ancestor who, virtually single-handed, recovered his lost merchant ship from a French prize crew late in the seventeenth century. Many streams have united to flow in the veins of this Cornish solicitor.

Richard Roe.

DEVELOPMENT PLAN

City of Plymouth Development Plan

Proposals for alterations or additions to the above development plan were on 13th January, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the district of South Stonehouse. A certified copy of the proposals as submitted has been deposited for public inspection at the Town Clerk's Office, Pounds House, Peverell, Plymouth. A certified copy of the proposals has also been deposited for public inspection at the Central Library, Tavistock Road, Plymouth. Copies of the proposals so deposited together with copies of the plan are available for inspection, free of charge, by all persons interested at the places mentioned above between 9 a.m. and 5 p.m. on weekdays. Any objections or representations with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 28th February, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the town clerk and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the " Points in Practice " Department, " The Solicitors' Journal," 21 Red Lion Street, London, W.C.1, but the following points should be noted :

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Decontrol : Professional Premises : Notice to Quit Served

Q. We act for a doctor who is the tenant of a flat in the Metropolitan Police district with a rateable value on 7th November, 1956, of £72. The flat was demised to our client by a lease dated 30th September, 1938, for the term of seven years from 25th December, 1936, first at the yearly rent of £190 and secondly the yearly rent of £30, as a contribution towards the supply of domestic hot water and central heating, the lighting and cleaning of the entrance hall, staircases and landings and the emptying of dustbins, both of which rents, making a total inclusive yearly rent of £220, are payable in advance by four equal quarterly payments. The lease also provides as follows :—

" The Lessee hereby covenants with the Lessor not to carry on or permit to be carried on upon the premises any profession trade or business whatsoever but to use the same as and for a private residence only or with the written consent of the Lessor for carrying on the profession of a Doctor Dentist or Solicitor. The consent of the Lessor for the Lessee to carry on his profession of a Doctor upon the premises and to exhibit a professional nameplate on the front railings of the Building of which the premises form part shall be deemed to have been given hereby."

Our client has been holding over since the expiration of the lease in 1943. The rateable value of the premises being in excess of £40, the Rent Acts now cease to apply, and the landlord has served on our client a Form S notice determining our client's right to retain possession on 6th October, 1958. In our view, however, this notice is invalid, because we consider the tenant is now governed by Pt. II of the Landlord and Tenant Act, 1954. If this view is correct the question is, can our client safely ignore the notice and successfully defend any subsequent proceedings for possession founded on it or could it be said that by ignoring the notice there might be an inference that it had been accepted ? If our client discloses to the landlord that in his view the notice is invalid it is very likely that the landlord will immediately serve notice in the requisite form under s. 25 of the Landlord and Tenant Act, 1954, terminating the tenancy and also refusing to grant a new tenancy or intimating willingness to grant a new tenancy as the case may be. (1) Do you agree with us that the notice served is invalid ? (2) Is our client protected under Pt. II of the Landlord and Tenant Act, 1954, by reason of his carrying on his profession on the premises ? (3) Do you consider that it would be best in the circumstances that our client should ignore the notice completely or do you advise that he should notify his landlord that he cannot accept the notice as valid as the tenancy is now governed by Pt. II of the Landlord and Tenant Act, 1954 ? (4) What length of notice would it be necessary for the landlord to serve under s. 25 of the Landlord and Tenant Act, 1954, and could the notice be served now or would the landlord have to wait until 6th October, 1958, before serving same ?

A. (1) We agree that the notice served is invalid (see (2), below).

(2) The tenancy became a statutory tenancy on 25th December, 1943 (*Morrison* v. *Jacobs* [1945] K.B. 577), and that tenancy is now deemed, for the purposes of Pt. II of the Landlord and Tenant Act, 1954, to be a tenancy continuing by virtue of s. 24 of that Act after the expiry of a term of years certain : Rent Act, 1957, Sched. IV, para. 11. By the Landlord and Tenant Act, 1954, s. 23 (2), " business " includes a profession.

(3) The client can, in our opinion, safely ignore the notice (not taking any step consistent with recognition as valid) ; whether it would be advisable to disillusion the landlord may depend on the personal element. Apparently the landlord did not seek to increase the rent on the ground of rise in cost of services under the Housing Repairs and Rents Act, 1954, s. 40, which suggests that he may not be unreasonable.

(4) The landlord could, we consider, serve a six months' notice at any time. Alternatively, the tenant could make a " request " for a new tenancy under s. 26.

Defects of Repair—Service of More than One Notice

Q. Where a tenant serves on his landlord a Form G specifying certain defects in the dwelling, subsequently can that tenant serve on such landlord further Forms G in respect of further defects, and thereafter can the local authority issue a certificate of disrepair in respect of each Form G so served where on the application of the tenant the local authority is satisfied that the dwelling is in disrepair in accordance with the provisions of Sched. I to the Rent Act, 1957, so that several certificates of disrepair may be existing together in respect of the same dwelling ?

A. There would seem to be nothing in the Rent Act, 1957, to prevent a tenant from serving a further Form G notice as envisaged in the question. We think, however, that the court would lean against allowing a tenant to serve a second Form G notice on his landlord in relation to defects already in existence when the first notice was served. That would be done either by an interpretation of para. 3 of Sched. I to the effect that the words " is in disrepair by reason of defects . . ." really meant " is in disrepair solely by reason of defects . . ." or else on the ground that the tenant was estopped from denying that there were in fact other defects in existence of which he knew (or perhaps ought to have known) when he served his first notice.

CONSOLIDATION OF PATENTS RULES : NEW INFORMATION SERVICE INTRODUCED

Amended rules making minor changes in the arrangements governing patents applications and fees have been laid before Parliament by the Board of Trade. They include the introduction of a new service to the public by which information will be supplied as to whether any particular patent is in force on payment of a nominal fee of 1s. for the first patent and 6d. for each succeeding one. This service will replace, and will, it is hoped, be an improvement on, the former annual publication of the " List of Patents in Force." The new rules are the Patents Rules, 1958 (S.I. 1958 No. 73). They are made under the Patents Acts, 1949 and 1957, and consolidate and replace the Patents Rules, 1949 (S.I. 1949 No. 2385) ; the Patents (Amendment) Rules, 1955 (S.I. 1955 No. 117) ; and the Patents (Amendment) Rules, 1957 (S.I. 1957 No. 618).

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

VALIDITY OF ONE-WAY STREET ORDER

Brownsea Haven Properties, Ltd. *v.* Poole Corporation

Lord Evershed, M.R., Romer and Ormerod, L.JJ.

16th December, 1957

Appeal from Vaisey, J. ([1957] 3 W.L.R. 669; 101 SOL. J. 799).

By s. 21 of the Town Police Clauses Act, 1847, a local authority may from time to time make orders " for the route to be observed by all carts, carriages, horses and persons, and for preventing obstruction of the streets . . . in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed . . ." By an order dated 5th March, 1957, and purporting to be made under s. 21 of the Town Police Clauses Act, 1847, the Poole Corporation required that all vehicles using a certain road within the borough should observe a route in one direction only. The defendants had earlier made an application to the Minister of Transport for an order under the Road Traffic Act, 1930, s. 46 (2), making the road a one-way street, and that application had been refused. The order dated 5th March, 1957, was, therefore, made by the corporation with a view to its continuance in force for a trial period and a further application to the Minister at a later date for an order under the Road Traffic Act, 1930, s. 46 (2). The plaintiffs, who owned an hotel situate on the road in question, obtained a declaration from Vaisey, J., that the order dated 5th March, 1957, was *ultra vires*, and the defendant corporation appealed. On the appeal, counsel acting for the defendants was instructed by the Treasury Solicitor and the plaintiffs took the preliminary point that the defendants' counsel had been instructed by a solicitor who had no practising certificate. It was not disputed that the Treasury Solicitor might properly offer his services to a private individual in a case in which the Crown had an interest in the subject-matter of the litigation, but it was said that the Crown had no interest because the particular order had expired by effluxion of time and the only live issue remaining was as to award of costs. Leave of the court was obtained by the plaintiffs to raise a point not taken before Vaisey, J., namely, that the expression " in any case in which the streets are liable to be thronged, etc. . ." should, in the context of s. 21 of the Act of 1847, be construed as limited to apply only to special or extraordinary events causing traffic dislocation.

LORD EVERSHED, M.R., referred to *R.* v. *Archbishop of Canterbury* [1903] 1 K.B. 289, and said that although the mere *ipse dixit* of a Minister of the Crown that the Crown had an interest in the subject-matter of litigation would not preclude the court from considering in a case whether the intervention of the Treasury Solicitor was in fact justified, it was clear that in the present case the Crown was sufficiently concerned. Traffic control was a matter of national concern and the real question at issue was whether a broad class of local authorities could make orders of this type of their own volition under the Act of 1847, or whether the orders could only be competently made under more recent legislation, which required that the orders should be confirmed by the Minister of Transport. Notwithstanding the expiry of the particular order, that issue remained on foot and was a continuing matter of concern, for it was not in doubt that the defendants (and other municipal authorities) wished to avail themselves of the powers of the Act of 1847 (if they subsisted) to regulate traffic from time to time. Contrary to the plaintiffs' submission, the words " route to be observed " in s. 21 of the Act of 1847 should not be construed as confined to a route linking two termini available to traffic proceeding in either direction, but should include the ordering of traffic in a thoroughfare to observe " one direction " or " route " therein only. On that point, therefore, the appeal succeeded. His lordship then considered the point raised by the plaintiffs with leave of the Court of Appeal and said that in the context of s. 21 the words " in any case when the streets are thronged . . ." should be construed in accordance with the rule known as the " *ejusdem generis* " rule of construction as covering only cases of the same class or genus as the three preceding instances, " public processions, rejoicings or illuminations," which were instances of occasions when the streets were thronged and liable to be obstructed. Even if the genus was not confined to instances strictly similar to those three, the expression covered only cases of traffic dislocation of a special, particular or extraordinary kind, in conditions likely to attract a crowd, as distinct from the circumstances of ordinary day-to-day traffic conditions: see the statement of the *ejusdem generis* rule in *Tillmanns & Co.* v. *S.S. Knutsford, Ltd.* [1908] 2 K.B. 385, 404 (affirmed [1908] A.C. 406). This view of the construction of s. 21 conflicted with the decision of the Divisional Court in *Teale* v. *Williams* [1914] 3 K.B. 395; *Edwards* v. *Wanstall* (1929), 142 L.T. 288; and *Etherington* v. *Carter* [1937] 2 All E.R. 528. These cases were not binding on the Court of Appeal but long-standing decisions would not be lightly disturbed. Referring to *Robinson Bros. (Brewers), Ltd.* v. *Houghton and Chester-le-Street Assessment Committee* [1937] 2 K.B. 445; [1937] 2 All E.R. 298 (affirmed [1938] A.C. 321), his lordship said exercise of the power to overrule was not dependent on all the circumstances there specified. To the extent that these decisions rested on the wrong construction of s. 21, they could not be supported, though his lordship did not say that they could not properly be otherwise supported—particularly by powers contained in the latter part of the section. In overruling them, his lordship placed emphasis on the expression of contrary judicial opinion in two of the cases, to the passing of the Act of 1930 which, in substance, deprived the decision in *Teale* v. *Williams* of significance, and said that he was satisfied that neither injustice nor inconvenience would be caused by giving the words in s. 21 the more limited and correct construction.

ROMER and ORMEROD, L.JJ., delivered concurring judgments. Appeal dismissed. Leave to appeal to House of Lords.

APPEARANCES: *Denys B. Buckley* and *John L. Arnold* (*Treasury Solicitor*); *G. D. Squibb*, Q.C., and *Jeremiah Harman* (*Cripps, Harries, Hall & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 137**

Chancery Division

STAMP DUTY: GIFTS *INTER VIVOS*: SETTLEMENTS OF SHARES: ORAL DIRECTION TO TRUSTEES AND SUBSEQUENT DECLARATION OF TRUST: WHETHER *AD VALOREM* DUTY

Grey and Another *v.* Inland Revenue Commissioners

Upjohn,, J. 3rd December, 1957

Appeal from Inland Revenue Commissioners.

In 1949 Edward William Hunter made five settlements, one in favour of each of his five grandchildren, and in 1950 he made a sixth settlement on his then existing and possible after-born grandchildren. The appellants were the trustees of each of these settlements. On 1st February, 1955, he transferred to the appellants, as his nominees, 18,000 ordinary £1 shares in a company. On 18th February, 1955, he orally and irrevocably directed the appellants thenceforth to hold the shares transferred to them on 1st February, as to five blocks of 3,000 shares each on the trusts respectively of the five settlements executed in 1949 and as to 3,000 shares on the trusts of the 1950 settlement, to the intent that such direction should result in the entire exclusion of Hunter from all future right, title and benefit to or in the shares and the income thereof. On 25th March, 1955, the appellants executed six declarations of trust which Hunter, although not expressed to be a party thereto, executed. They were all in similar form and each recited that the appellants were the holders of 3,000 shares in the company, Hunter's oral direction on 18th February, the acceptance of the trust reposed in them by that oral direction and that the giving of the direction and its nature were testified by the execution by him of the deed. The operative part of each deed declared that the appellants acknowledged and declared that they were holding the shares on the trusts of the settlement to the intent that the shares should form part of the trust fund. The trustees appealed from an assessment of the six declarations

of trust to *ad valorem* stamp duty as voluntary dispositions within s. 74 of the Finance (1909–10) Act, 1910.

UPJOHN, J., said that he was dealing in this case with the voluntary transfer of an equitable interest in pure personalty where the legal estate was already outstanding in nominees, and his observations were confined to that type of transaction. In his judgment a direction to trustees to hold trust property upon trust for a donee operated as a transfer of the equitable interest to the donee by way of trust and not by way of assignment. In the first place the element of assignment, that was of direct passing of the equitable interest from donor to donee by appropriate words of assignment or gift, was lacking. Secondly, the only person who could effectively declare new trusts concerning the equitable interest was the donor himself. By giving directions to trustees as to new trusts the donor had deliberately chosen the path of declaring new trusts rather than the path of assignment. For these reasons a direction to trustees operated by way of trust and not for the purposes of s. 9 of the Statute of Frauds by way of assignment. Accordingly, such a direction might be by parol. Section 9 had been repealed and replaced by s. 53 (1) (*c*) of the Law of Property Act, 1925, but he was satisfied that s. 53 (1) (*c*) was directed at precisely the type of disposition which fell within the old s. 9, i.e., assignments in contradistinction to the transfer of equitable interests by way of declaration of trust. In his judgment dispositions by way of trust were not within the intendment of the section. Dealing with a secondary argument, his lordship said that whether without further evidence the commissioners could properly have drawn the inference that the oral directions and subsequent written declarations were all part of one transaction, he did not decide, but apparently they did not do so. He doubted whether in the absence of such a finding of fact it was open to him to draw any such inference, but even if it were, he did not think he ought to do so. Accordingly, the equitable interest in the shares passed on 18th February, 1955, and there being nothing left to pass under the subsequent declaration of trust no *ad valorem* duty was thereby attracted. The appeal was allowed and the *ad valorem* duty must be repaid.

APPEARANCES: *Neville Gray*, Q.C., and *W. T. Elverston* (*Soames, Edwards & Jones*); *R. O. Wilberforce*, Q.C., and *E. Blanshard Stamp* (*Solicitor of Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 168**

STAMP DUTY: GIFTS *INTER VIVOS*: ORAL AGREEMENT FOR VALUE FOR TRANSFER OF REVERSIONARY INTEREST TO TENANT FOR LIFE: SUBSEQUENT DEED OF TRANSFER

Oughtred *v.* Inland Revenue Commissioners

Upjohn, J. 3rd December, 1957

Appeal from the Inland Revenue Commissioners.

Under and by virtue of a settlement dated 1st January, 1924, an appointment dated 18th June, 1956, and a release of the same date, the appellant was the tenant for life of 100,000 preference shares and 100,000 ordinary shares in a company, and her son Peter was absolutely entitled to the shares subject to the appellant's life interest. By an oral agreement made on 18th June, 1956, it was agreed between the appellant and Peter that he, on 26th June, would exchange his interest under the settlement and subsequent deeds for certain shares in the same company then owned by the appellant to the intent that the appellant's life interest in the shares subject to the settlement should be enlarged into absolute ownership thereof. On 26th June, by a deed of release between the appellant, Peter and the trustees, the appellant and Peter gave release to the trustees. The deed recited the oral agreement and that the trust fund, consisting of the shares, "is accordingly now held in trust for [the appellant] absolutely," and that it was intended to transfer them to the appellant, such transfer being the consideration for the release. On the same day, by a deed made between the appellant, Peter and the trustees, the trust fund of 100,000 preference shares and 100,000 ordinary shares was transferred to the appellant in consideration of 10s. The appellant appealed from an assessment on the deed of transfer to *ad valorem* duty on the value of Peter's reversionary interest by way of case stated under s. 13 of the Stamp Act, 1891.

UPJOHN, J., said that the principal argument of the commissioners in support of their claim was to this effect: The agreement of exchange on 18th June (and for this purpose it was conceded on both sides that it was on all fours with an agreement of sale and purchase for a money consideration) was oral, and therefore, having regard to s. 53 (1) (*c*) of the Law of Property Act, 1925, no equitable interest passed to the appellant. He had just dealt at length in *Grey* v. *Inland Revenue Commissioners*, *ante*, p. 84, with that section. Accordingly, the recital in the deed of release that the trust fund was "accordingly now held by the trustees in trust for" the appellant was incorrect. Therefore Peter's equitable interest in the reversion passed on the transfer, which was accordingly a conveyance on sale of such equitable interest. A complete answer to this claim was to be found in s. 53 (2) of the Law of Property Act, 1925, which was in these terms: "This section does not affect the creation or operation of resulting, implied or constructive trusts." This was an oral agreement for value, and accordingly, on the making thereof, Peter, the vendor, became a constructive trustee of his equitable reversionary interest in the trust funds for the appellant. No writing to achieve that result was necessary, for an agreement of sale and purchase of an equitable interest in personalty (other than chattels real) may be made orally, and s. 53 had no application to a trust arising by construction of law. Counsel for the Crown contended also that, even if the deed of transfer passed nothing except the legal estate, yet the deed of transfer was a conveyance on sale within the meaning of s. 54 of the Stamp Act. Although the transfer was executed as a direct result of the agreement for sale and really upon the occasion thereof, still it remained, in his judgment, incorrect in the particular circumstances of this case to describe it as a conveyance on sale. The transfer was, in his judgment, a transfer not on sale but on the winding up of the trust and upon the release of the trustees. This point also failed. The appeal should be allowed. The *ad valorem* duty must be repaid. He fixed the duty at 10s.

APPEARANCES: *Peter E. Whitworth* (*Moeran Oughtred & Co.*, for *Robinson, Sheffield & Till*, Beverley, Yorkshire); *R. O. Wilberforce*, Q.C., and *E. Blanshard Stamp* (*Solicitor, Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 174**

INCOME TAX: RACECOURSE BETTING CONTROL BOARD: EXPENDITURE PRESCRIBED BY STATUTE: WHETHER DEDUCTIBLE EXPENSES

Racecourse Betting Control Board *v.* Young (Inspector of Taxes)

Same *v.* Inland Revenue Commissioners

Young (Inspector of Taxes) *v.* Racecourse Betting Control Board

Inland Revenue Commissioners *v.* Same

Upjohn, J. 6th December, 1957

Appeals from the Commissioners for the Special Purposes of the Income Tax Acts and cross-appeals.

The Racecourse Betting Control Board was a corporation set up under the Racecourse Betting Act, 1928, to operate a totalisator on approved racecourses. The board established the totalisator fund pursuant to s. 3 (4) of the Act from a percentage of the moneys staked on the totalisator. Under s. 3 (6) the board applied this fund in accordance with schemes prepared by them and approved by the Secretary of State for purposes conducive to the "improvement of breeds of horses or the sport of horse racing," but subject to the payment thereout of "all taxes, rates, charges, and working expenses," and "the retention of . . . any sums . . . to meet contingencies. . . ."

For the year ending 31st December, 1953, the board authorised the following expenditure: (1) to racecourse executives from the racecourse fund, £230,977, which was divided among the racecourses approximately in proportion to the cost of maintenance of each racecourse as a fraction of the total cost of maintaining all racecourses, and was normally used for improvement to the racecourse itself; (2) to owners and trainers in reduction of the cost of travelling racehorses to race meetings, £168,555; (3) runners' allowance, attributable to 1954, £3,087, a sum of £1 per runner being paid as an additional allowance to owners of horses who ran their horses in any race; (4) towards the administrative expenses of the Jockey Club and National Hunt Committee and the cost of the race finish recording camera, £62,050; (5) amount paid for assistance of point-to-point meetings, £24,233; (6) for the assistance of racing under the rules of the Pony Turf Club,

£1,975. All the items except (3) were included in schemes under s. 3 (6) of the Act, item (3) being included in the board's working expenses. It was conceded that the board was carrying on the trade of totalisator operator. The Special Commissioners held that these were deductible as expenses laid out for the purposes of the board's trade as such totalisator operator within the meaning of s. 137 (*a*) of the Income Tax Act, 1952; with the exception of certain payments which were reimbursements of expenditure on the provision of certain physical installations on racecourses which they held were of an enduring advantage to the board and were expenses of a capital nature and not deductible.

UPJOHN, J., said that the question that he had to determine was whether the view which had been expressed by the board was correct or not. It seemed to him that the scheme of the Act was this: the board engaged in trade or something in the nature of trade; from that it made a surplus, and from that surplus certain deductions were to be made. They were set out between brackets in subs. (6): "(. . . the payment out of the totalisator fund of all taxes, rates, charges and working expenses, and the retention of such sums as they think fit to meet contingencies, and the payment of sums to charitable purposes . . .)." After that had been done, the trading activities of the board had come to an end. Their trading activities had resulted in the creation of a fund. That fund was to be held in accordance with the trusts pointed out in subs. (6). It was a fund from which the working expenses of carrying on the trade had been deducted, and from which tax had been deducted. If a claim to income tax could not be resisted, that included the deduction of income tax; rates, charges and other working expenses were all to come out of the fund before it was held upon the trusts of subs. (6), and, accordingly, this fund at that stage was a fund which had finished with trading activities, and appropriations thereout had no longer any reference to trading activities of the board. The appropriations were made because they had to be so made pursuant to s. 3 (6) of the Act. The board was under a duty to prepare a scheme. It was a statutory distribution of a fund in the hands of the board, and had nothing whatever to do with the trading activities of the board. As to the second point, was it proper to regard the "runners' allowances" as being proper deductions for the purpose of income tax: first, was it proper to deduct that sum from the fund which was going to be dealt with by s. 3 (6)? It could only be deducted if it was a charge, or a working expense, or a deduction to meet contingencies. In s. 3 (6) "working expenses" meant the ordinary expenses connected with working a totalisator, and the deduction of this sum for runners' allowances as "working expenses" was *ultra vires* the powers of the board; but even if it were a working expense, it was not a proper deduction for the purposes of income tax. As to the question whether expenditure on installations at racecourses was a deductible expense, it was not necessary to come to a final conclusion on that for the reasons he had given, but it would be difficult to treat it as an expense of a capital nature within the type envisaged by Lord Cave in *British Insulated and Helsby Cables, Ltd.* v. *Atherton* [1926] A.C. 205; 42 T.L.R. 187; 10 T.C. 188. In the result, the appeals would be allowed, and the cross-appeals dismissed.

APPEARANCES: *F. N. Bucher*, Q.C., *Alan S. Orr* and *J. G. Monroe* (*Solicitor of Inland Revenue*); *F. Heyworth Talbot*, Q.C., and *Desmond Miller* (*Simmons & Simmons*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 122**

RENT RESTRICTION: PREMIUM: THREE YEARS' RENT IN ADVANCE

Grace Rymer Investments, Ltd. *v.* Waite and Others

Danckwerts, J. 16th December, 1957

Adjourned summons.

By a legal charge dated 20th December, 1955, certain freehold property was charged in favour of a company to secure the repayment of the principal sum of £1,700, and it was provided that, if default was made by the mortgagors in payment of two monthly instalments, the principal money should become due and the statutory rights of the company should become exercisable. The property and the legal charge were duly registered at the Land Registry. The property had, at the date of the legal charge, been divided into flats, which were let to tenants who had been required to pay three years' rent in advance. Default having been made by the mortgagors in payment of the instalments, an order was obtained by the company for payment of the principal and interest and (the mortgagors having failed to comply with the order) proceedings were, on 8th April, 1957, commenced for delivery of possession of the property. The tenants of the flats claimed that, having paid to the mortgagors sums by way of rent in advance, they were entitled to remain in occupation of the flats, on the ground that they were protected by the Rent Restrictions Acts.

DANCKWERTS, J., said that the principal argument on behalf of the plaintiff company was that the payment of the sums, supposed to represent rent in advance, were in fact premiums and were rendered illegal by the provisions of the Rent Acts. Therefore, it was said, the tenancies of the defendants were unlawful and could not prevail as the defendants who were in occupation were parties to the illegality. There were two propositions, therefore: (1) the payments were premiums, and (2) being unlawful exactions by the landlords, the tenants had no lawful tenancies. It could not be a premium or unlawful to require payment of rent in advance in every case. It was well known that rents were often required to be paid in advance where the circumstances suggested that the tenant was not a very stable character. But it might well be that the demand of several years' rent in advance could not be justified on any such ground. At what point was the line to be drawn? One test might be that if the demand was obviously a device to get over some provision of the law, and not merely a bona fide attempt to prevent the landlord being deprived of the ability to recover his rent, the transaction might be shown to be something other than what it was called. In the circumstances of the present case the payments were, as Romer, J., said in *Woods* v. *Wise* [1955] 2 Q.B. 29, 55, within the scope and object of s. 2 of the Landlord and Tenant (Rent Control) Act, 1949, and premiums unlawfully demanded by the landlords. If that was so, then it was plain that the landlords had committed an offence under the Rent Acts. But did it follow that the tenancies of the tenants were thereby rendered invalid, so that they could be turned out and be deprived of the property which they had expected to enjoy? A consideration of the terms of the Rent Acts led to a different conclusion. The Rent Acts were passed for the protection of tenants and to restrain the demands of landlords. The Acts did not treat the tenant as tainted by the offence committed by the landlord. In the result, if the tenants in the present case were compelled unlawfully to pay a premium to the landlords, this did not affect the validity of their tenancies, and they were entitled to deduct from their rents the amounts which they had paid, unless they elected to attempt to recover from the landlords the proportion referable to the future. Accordingly, no order for possession in favour of the plaintiff company would be made. Judgment for the defendants.

APPEARANCES: *Peter Oliver* (*A. Kramer & Co.*); *N. F. Stogdon* (*Humphrey Razzall & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 200**

STAMP DUTY: AGREEMENT TO SELL SHARES AND DEED OF TRANSFER: CONSIDERATION PAYABLE OVER 125 YEARS: WHOLE AMOUNT DUE IF INSTALMENT NOT PAID

Western United Investment Co., Ltd. *v.* Inland Revenue Commissioners

Upjohn, J. 20th December, 1957

Appeal from the Inland Revenue Commissioners.

By an agreement of 9th May, 1956, the owner of certain shares agreed to sell them to the appellant company, the consideration being payable by 125 instalments of £44,000 without interest, and amounting in all to £5,500,000. The first instalment under the agreement was payable on 1st June, 1956. Clause 3 of the agreement provided that if the company should make default in payment of any of the instalments "after the same shall become due the whole of the unpaid instalments shall become immediately payable . . ." The deed of transfer was also executed on 9th May, 1956, for the convenience of the parties, but it was conceded that it should be treated for the purposes of stamp duty as if it had been executed on 1st June, 1956. The Inland Revenue Commissioners assessed the agreement to stamp duty of £13,750 (namely, 5s. per £100 on the whole amount ultimately payable), under para. 1 of Sched. I to the Stamp Act, 1891, as being the

only or principal or primary security for the periodical payments therein. They assessed the transfer to *ad valorem* duty pursuant to s. 56 (2) of the Act at the rate of £1 for every £50 of the sum of £5,500,000, which, under cl. 3 of the agreement, might become payable within the next twenty years. The company disputed the assessments but paid the amounts assessed and asked the commissioners to state a case under s. 13 of the Act. The company contended that the agreement was a "separate instrument" for the purpose of s. 56 (4) of the Act, and therefore chargeable with a duty of 10s. only; and that, according to the terms of the sale, the total amount payable under the agreement during the next twenty years was only £880,000 (i.e., 20 × £44,000) and that *ad valorem* duty on the transfer was only payable, therefore, on that amount, namely the sum of £17,600.

UPJOHN, J., said that on the whole he had come to the conclusion that the submissions on behalf of the Crown [in respect of duty under the agreement] were correct. The exemption was to be granted only where one found first a conveyance on sale chargeable with duty, and in that document or in a separate contemporaneous or subsequent instrument a security; and it was not sufficient to find that the parties had executed a security although they might be intending to execute a conveyance on sale thereafter. This part of the appeal failed and he assessed the duty at £13,750. Secondly, as to the deed of transfer: no one doubted that this had to be stamped *ad valorem* as a conveyance on sale, and as the consideration was payable by instalments, the relevant provision was s. 56 of the Stamp Act. The argument of the Crown might be summarised thus: that in one contingency all the instalments might become payable; i.e., if the contingency happened on which cl. 3 operated, then there was an acceleration so that all the instalments might become payable within the twenty years. He did not agree with that argument. Clause 3 was in a literal sense a term of the sale, but it was a term of the contract which only came into operation if the terms of sale were broken. The terms of sale for the purposes of s. 56 were the terms of sale on which the parties contemplated that the property would be paid for, i.e., 125 annual instalments of £44,000. They did not comprehend terms of the contract of sale which came into operation if, but only if, the agreed terms of sale were broken. The whole structure of s. 56 negatived the literal construction placed on it by the Crown. He allowed the appeal on this part of the case, and assessed the duty at £17,600 and ordered the return of the balance of £92,400, which had been paid. The final question was whether he could order interest to be paid on that sum. The claim was based on s. 3 of the Law Reform (Miscellaneous Provisions) Act, 1934. The question was whether this sum could be described as a debt, and these proceedings as proceedings for recovery of a debt. That depended on the true construction of s. 13 (1) and (4) of the Stamp Act. In his judgment, the payment under s. 13 could not be brought in as a debt under the Act of 1934, nor could these proceedings properly be described as proceedings for recovery of a debt. Accordingly there was no jurisdiction to order payment of interest.

APPEARANCES: *Sir Andrew Clark*, Q.C., and *E. I. Goulding* (*Charles H. Wright & Brown*); *R. O. Wilberforce*, Q.C., and *E. Blanshard Stamp* (*Solicitor of Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [2 W.L.R. 192

COMPANY: WINDING UP: CONTRIBUTORIES: SURPLUS ASSETS: REGISTER OUT OF DATE: DISTRIBUTION

In re Phoenix Oil and Transport Co., Ltd. (No. 2)

Wynn Parry, J. 20th December, 1957

Adjourned summons.

In the compulsory winding up of a company under an order of the court made in 1950, the liquidator had surplus assets sufficient to pay 10s. 2d. per £1 of stock held. There were some 9,100 stockholders on the register, which was now some seven years out of date. On 31st July, 1957, the court dispensed with the settlement of a list of contributories: [1957] 3 W.L.R. 633; 101 SOL. J. 779. In the present summons the liquidator asked that it might be determined whether, on the true construction of the Companies Act, 1948, and in the events which had happened, he was entitled to distribute the surplus assets of the company amongst the contributories in accordance with their respective rights thereto. Alternatively, he asked that he might be at liberty to make a return of capital at the rate of 10s. 2d. per £1 of stock held to the contributories, on the ground that r. 120 of the Companies (Winding-up) Rules, 1949, gave the court a discretion to allow him to make a distribution before an inquiry was made in respect of contributories.

WYNN PARRY, J., said that the difficulty which arose was that the register was at least seven years or more out of date, and it was clear that no distribution could be made on the basis of the register as it now stood. On 31st July, 1957, Roxburgh, J., made an order, on a summons taken out by the liquidator in the liquidation, dispensing with the settlement of a list of contributories: see *In re Phoenix Oil and Transport Co., Ltd.* [1957] 3 W.L.R. 633; 101 SOL. J. 779. On this summons, counsel for the liquidator had challenged the existing practice, and contended that in a compulsory winding up the liquidator was free to make a distribution (that was, to require the Bank of England to make the necessary payments) without the necessity of obtaining any order from this court. The relevant sections of the Companies Act, 1948, dealing with winding up showed clearly that as regards voluntary winding up the legislature had followed a different policy from that in a compulsory winding up. In the latter case, it retained under the express provisions of the statute a much greater degree of control. Sections 245 (2) (*h*) and 265 were the relevant sections of the Companies Act, 1948. Section 265 was mandatory, and meant that the court was to make an adjustment among the contributories if necessary, and having done that, if it were required, it was then to proceed to make the distribution contemplated. In his view, that section was the only operative section as regards actual distribution, and it applied whether or not an adjustment among the contributories was required. He therefore answered the first question in the negative. It was then sought to invoke certain words in r. 120 of the Winding-up Rules, which were said to confer a discretion on the court, the exercise of which in favour of the liquidator would enable him to make the proposed distribution of 10s. 2d. without any further order of the court. It was quite clear that, having regard to the lapse of time since the winding-up order in 1950, no distribution could be made on the basis of the register as it stood. There was, however, a proviso in the rule: "unless the court shall otherwise direct." He could conceive that in a simple case the court might be persuaded to dispense with some of the particulars mentioned in the rule, but he could see no justification for doing so in a case like the present, where, *ex concessis*, not only had there not been a settled list of contributories but the liquidator was faced with something in the nature of an inquiry before he could say among whom the surplus should be distributed. He would make no order on this question. Order accordingly.

APPEARANCES: *R. O. Wilberforce*, Q.C., and *Arthur Bagnall* (*Herbert Smith & Co.*); *Denys Buckley* (*Solicitor, Board of Trade*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [2 W.L.R. 126

CHARITY: SCHEME TO TRANSFER PREMISES AND FUNDS OF INSTITUTE TO ANOTHER BODY: JURISDICTION

In re Whitworth Art Gallery Trusts; Manchester Whitworth Institute *v.* Victoria University of Manchester

Vaisey, J. 20th December, 1957

Adjourned summons.

The Manchester Whitworth Institute was incorporated by Royal Charter on 2nd October, 1890, its objects being, *inter alia*, the management and conduct of the Whitworth Art Gallery, which contained a permanent collection of pictures and exhibition of textiles which was open to the public. The freehold of the building, the contents thereof and the investments held for its purposes were the property of the institute. The income of the institute having become insufficient to maintain its activities, the governors now sought the approval of a scheme for the management and administration of the trusts of the charity relating to the gallery, its contents and the investments and for the transfer of the premises to the Victoria University of Manchester on condition that the university as sole trustee should take over the art gallery and be solely empowered to manage it, and although keeping it open to the public should have facilities for using it at certain times exclusively for purposes connected with the university.

VAISEY, J., said that the proposition which seemed to emerge from the authorities was that a charitable corporation founded

by Royal Charter could not be refounded or re-established by the court, but could be regulated and controlled, especially on financial grounds, and in such a case the court was entitled to have regard to altered circumstances. The scheme was a fit and proper scheme which the court had full jurisdiction to sanction and the necessary order would be made for that purpose. Declaration accordingly.

APPEARANCES: *K. J. T. Elphinstone* and *D. S. Chetwood* (*Pritchard, Englefield & Co.*, for *Boote, Edgar & Co.*, Manchester); *Denys Buckley* (*Treasury Solicitor*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [2 W.L.R. 181

Queen's Bench Division

CRIMINAL LAW: OATH: AFFIRMATION

R. *v.* Pritam Singh

Mr. Commissioner Wrangham. 12th December, 1957

Trial on indictment at Leeds Assizes.

The accused, a Sikh, had been a witness in proceedings in a magistrates' court and, according to his religion, an oath sworn on the "Granth" would have been binding on him. He had not objected to taking an oath, but no copy of the "Granth" was available and he made an affirmation before giving his evidence. He was charged with having committed perjury in the magistrates' court, contrary to s. 1 (1) of the Perjury Act, 1911.

Mr. COMMISSIONER WRANGHAM, in his direction to the jury, said that the question was whether the accused was lawfully sworn in the magistrates' court. By the Oaths Act, 1888, any witness who wanted to affirm on the ground that he had no religious belief or that his religious belief forbade him to take the oath could affirm instead of taking the oath. If there was any indication that the accused fell into either of those two classes his affirmation would be as good as his oath and he would be equally liable to be prosecuted for perjury. But the evidence was that the accused had a religious belief, the Sikh faith; that there was a form of oath which he would regard as binding on him as a Sikh; and that, in any case, he never indicated that he wanted to affirm at all. The real reason why he affirmed instead of taking the oath was because it was impracticable in the magistrates' court to administer the Sikh oath. Apparently the Holy Book of the Sikh religion was very difficult to procure and it was not available in the magistrates' court. It might be thought that where it was found impossible or difficult that a man should be sworn according to the oath of his own religion, it would be reasonable enough if Parliament provided that he should be permitted with his own consent to affirm and that such affirmation should count as an oath, but Parliament had not yet so provided. In the circumstances there never would be evidence fit for consideration on this charge, and a formal verdict of "not guilty" against the accused should be returned. Verdict: not guilty.

APPEARANCES: *E. J. Parris* (*Drabble & Stephenson*, Huddersfield); *A. J. Cotton* (*Harry Bann*, Town Clerk, Huddersfield).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law [1 W.L.R. 143

BASTARDY: "SINGLE WOMAN"

Kruhlak *v.* Kruhlak

Lord Goddard, C.J., Devlin and Pearson, JJ.

19th December, 1957

Case stated by Osgoldcross, West Riding of Yorkshire, Justices, sitting at Castleford.

A woman who had given birth to a bastard child subsequently married the man alleged to be the father of the child, but the circumstances were such that the child was not legitimated by the marriage. After some years a separation order containing a non-cohabitation clause was made in favour of the wife on the ground of the husband's cruelty. The wife then issued a complaint under s. 3 of the Bastardy Laws Amendment Act, 1872, against the husband, applying for maintenance in respect of the child, and the husband contended that, as against him, the wife could not establish herself to be a "single woman" within the meaning of the Act. The justices were of the opinion that there was a distinction from the facts in *Mooney* v. *Mooney* [1953] 1 Q.B. 38, in that the wife had obtained an order against the husband on the grounds of persistent cruelty, but that in view of the judgment in that case it was not open to them to hold that a married woman who summoned her husband could be heard to say that she was a single woman, and accordingly they dismissed the complaint. The wife appealed.

DEVLIN, J., reading the first judgment, said that it had been settled by a series of cases that in construing the expression "single woman," the courts would have regard to the *de facto* position of the woman rather than to her status in the eyes of the law. Thus a woman who had been legally separated from her husband and one who lived apart from him and had by her conduct forfeited the right to maintenance had been held to be a single woman. The importance of that was that until 1948 a man who had married a woman with an illegitimate child was bound to support that child as well as any children of his own from the marriage. The National Assistance Act, 1948, now provided that a husband was bound to support only his own children. In *Mooney* v. *Mooney*, *supra*, the woman had married the putative father, and also, as in the present case, the marriage did not legitimate the child. Such a case raised no problem before the Act of 1948, but after the Act the only way in which she could get maintenance for the child was by means of a bastardy order. The artificiality of the construction which the courts had given to the expression "single woman" was brought into high relief when a wife asserted against her own husband that she was a single woman. Nevertheless, once the point was reached when the fact of singleness was determined by looking at the actual state to which the woman had been reduced and not at her status in the eyes of the law, a woman whose husband had deserted her or cast her off could say to him, with as much force as to anyone else, that he had reduced her to living as a single woman. If she could not it would mean that he escaped the obligations of putative fatherhood first by marrying her and then by committing a matrimonial offence. In *Mooney* v. *Mooney* the husband was willing to give his wife all the benefits of marriage and to treat his illegitimate child just as though it had been born in wedlock, and the court held that in such circumstances a wife could not be heard to say as against her husband that she was to be treated as if she were a single woman. In the present case there was nothing to prevent the appellant from relying on the separation order in the same way as had been done in the past to justify her claim that she was a single woman. The appeal should be allowed.

LORD GODDARD, C.J., agreeing, said that it was firmly established that for the purposes of the bastardy laws a married woman living apart from her husband might be regarded, if the circumstances permitted, as a single woman. A married woman who was living with her husband at the time when the application was made had never been treated as a single woman, but as in this case she was living apart from him under the separation order, his lordship did not see why she should not take proceedings against him, as the child was born before marriage, just as she could against any other man. In *Mooney* v. *Mooney*, *supra*, there was no ground on which the woman could have been regarded as a single woman.

PEARSON, J., agreed. His lordship said that the principle to be deduced from the authorities was that a married woman who was for the time being effectively separated from her husband might be regarded as a single woman for the purposes of the Act of 1872, and the material time was the time of the application. Appeal allowed.

APPEARANCES: *R. D. Ranking* (*Long & Gardiner*, for *A. Maurice Smith*, Castleford; *J. B. Deby* (*Collyer-Bristow & Co.*, for *Alf Masser & Co.*, Castleford).

[Reported by Miss J. F. LAMB, Barrister-at-Law.] [2 W.L.R. 131

Probate, Divorce and Admiralty Division

JUDICIAL SEPARATION: POWER TO ORDER WOMAN NAMED TO PAY WIFE'S COSTS

Leach *v.* Leach and Harrower

Mr. Commissioner Latey, Q.C. 20th December, 1957

Undefended suit.

Mr. Commissioner LATEY, Q.C., said that it had been submitted that the court had no jurisdiction to make an order for costs against the woman named in the present suit because s. 3 (2) of the Matrimonial Causes Act, 1950, applied only to divorce

and not to judicial separation and that submission was supported by reference to Rayden on Divorce, 6th ed., p. 484. He referred to the Supreme Court of Judicature (Consolidation) Act, 1925, s. 50, and to the Matrimonial Causes Rules, 1957, r. 5 (1). The submission that the court had no jurisdiction was wholly unacceptable. Section 3 (2) of the Act of 1950 was picked up and rendered applicable to suits for judicial separation by s. 14 (1), and wherever there were parties to a suit the court was entitled to make an order for costs. Section 225 of the Supreme Court of Judicature (Consolidation) Act, 1925, clearly stated that "'Party' included every person served with notice of or attending any proceeding, although not named on the record." In the present case the woman named was named on the record, and she stood in just the same position as a male co-respondent would in a husband's petition for divorce on the ground of his wife's adultery, and an order for costs must be made against her and the respondent.

APPEARANCES: *H. S. Law* (*Vizard, Oldham, Crowder & Cash*); *D. Loudoun* (*Withers & Co.*).

[Reported by Miss ELAINE JONES, Barrister-at-Law] **[1 W.L.R. 146**

PROBATE: ADMINISTRATION: POWER OF PROBATE JUDGE TO CONSTRUE WILL: CONSTRUCTION

In the Estate of Last, deceased

Karminski, J. 15th January, 1958

Probate motion.

A testatrix sought to dispose of her estate by a will in the following terms: "I give and bequeath unto my brother . . . All property and everything I have money and otherwise. At his death anything that is left, that came from me to go to my late husband's grandchildren . . ." The brother duly proved the will and died intestate leaving no persons interested on his intestacy. The husband's grandchildren then applied for a grant of letters of administration *cum testamento annexo de bonis non administratis* claiming that, upon the true construction of the will, they were entitled in equal shares to the estate of the testatrix. The application was opposed by the Treasury Solicitor, who contended that the gift to the brother was absolute and that the estate should go to the Crown as *bona vacantia*.

Upon the case for the applicants being opened KARMINSKI, J., doubted whether the Probate Division was the appropriate division to deal with the question of the construction of the will, stating that the court was not bound by the statement in the Annual Practice, 1957, p. 3338, but could make a grant to any suitable person under s. 162 of the Supreme Court of Judicature (Consolidation) Act, 1925, and leave the matter of construction to be referred to the Chancery Division. After hearing a plea *ad misericordiam* by both counsel, and remarking that the modern view as to the function of the Probate Court was that that court should interfere in questions of construction as little as possible, he, however, ruled that he would determine the question of the construction of the will as a matter of convenience in order to avoid what might amount to depletion of the assets of a small estate if reference to the Chancery Division had to be made. On the point of construction Karminski, J., said that with the aid of a number of authorities (some of which were themselves difficult to reconcile) he had to try to ascertain first the true principles of construction and then to apply them in order to ascertain what were the testamentary intentions of this unskilled testatrix. The introduction of the words "anything that is left" did not prevent the cutting down of an absolute interest to a life-interest if the will itself supported such a construction (see Theobald on Wills, 11th ed., p. 434). In *Constable* v. *Bull* (1849), 3 De G. & S. 411, the words "whatever remains of my said estate and effects" were held to prevent the widow from disposing of the property and pass to the other legatees mentioned in the will a substantial interest. There was not any real difference in meaning between the words "whatever remains" and "anything that is left." He had been referred to a number of decisions in the contrary sense, perhaps the strongest of which was *In re Jones* [1898] 1 Ch. 438. In *In re Gouk* [1957] 1 W.L.R. 493; 101 SOL. J. 265, a testatrix gave all the remainder of her estate to her sister and, thereafter, to her sister's issue. Danckwerts, J., had to consider the meaning of the words "and thereafter," which he held to be indistinguishable from the word "afterwards." He held that the sister took absolutely, since there was no express reference to her death. That case must be distinguished from the present where the words used by the testatrix were "at his death." In a matter of construction of the present kind it was clearly essential to pay particular attention to the terms of the instrument which was being construed and to avoid too close comparisons with words used in wills in other cases. In the present case, looking at the will as a whole, he had come to the conclusion that the words used were sufficiently clear to cut down the brother's interest from an absolute to a life-interest. Clearly there was an ambiguity, but he had attempted to read the will as a whole, and then to reach that construction which most effectively, in his view, expressed the intentions of the testatrix. He reminded himself of the words of Joyce, J., in *In re Sanford* [1901] 1 Ch. 939; "Weight may be given to the consideration that it is better to effectuate than to frustrate the testator's intentions." In the result, upon the true construction of the will the applicants were entitled in equal shares to the estate of the testatrix and to a grant of letters of administration with the will annexed *de bonis non administratis* of the estate of the testatrix. Order accordingly.

APPEARANCES: *J. W. Bygott-Webb* (*Tapp, Blackmore & Weston*, for *Cousins, Burbidge & Connor*, Portsmouth); *Victor Russell* (*Treasury Solicitor*).

[Reported by Miss ELAINE JONES, Barrister-at-Law] **[2 W.L.R. 186**

Court of Criminal Appeal

MURDER: DEFENCE OF DIMINISHED RESPONSIBILITY: DIRECTION TO JURY

R. *v.* Spriggs

Lord Goddard, C.J., Hilbery and Salmon, JJ.

14th January, 1958

Appeal against conviction.

The appellant was convicted at Birmingham Assizes before Jones, J., of capital murder by shooting, and was sentenced to death. At the trial one of the defences put forward was that the appellant was suffering from diminished responsibility within the meaning of s. 2 of the Homicide Act, 1957, and there was evidence which could have justified the jury in finding that it was a case of diminished responsibility, although it was not such as to compel them to come to that finding. In summing up the judge read s. 2 of that Act to the jury, told them that it was for them to decide whether or not the appellant was suffering from such an abnormality of mind as to substantially impair his mental responsibility, and then reviewed the evidence on that issue. The appellant appealed against his conviction on the grounds, *inter alia*, that the judge had failed to give to the jury any or any sufficient direction as to the meaning of the expressions "abnormality of mind" or "mental responsibility" in s. 2 (1) of the Act of 1957, and that, since counsel for the prosecution in his speech to the jury had submitted that "abnormality of mind" was limited to a deficiency of intelligence and that certain conditions—emotional instability, temperamental instability, gross personality disorder, psychopathic personality, emotional immaturity, abnormality of control of the emotions, and immature personality—could not come within the expression, the judge should have ruled upon those submissions.

LORD GODDARD, C.J., giving the judgment of the court, said that a judge could do no more than call the attention of the jury to the exact terms of the section which Parliament had enacted and leave them to say whether upon the evidence they found that the case came within the section or not. When Parliament had defined a particular state of things, as they had defined what was to amount to diminished responsibility, it was not for judges to attempt to define or redefine the definition, but it was a queston of fact for the jury to decide. The conception of diminished responsibility had been borrowed from the Scottish common law which recognised, as Lord Cooper, Lord Justice-Clerk, pointed out in *H.M. Advocate* v. *Braithwaite* [1945] S.C.J. 55, 57, that a man might be not quite mad but a borderline case and that was the sort of thing which amounted to diminished responsibility. Where a defence of insanity was set up there was no test other than that laid down in the *M'Naghten* case and it was for the jury to decide whether or not there was disease of the mind; that could only be done by listening to the medical evidence and the facts of the case and coming to the conclusion whether the act which was done was the act of a sane or an insane man. So here all that could be done was to read the section to the jury and say: "These are the tests you have to apply.

You are to consider whether he is suffering from such abnormality of mind whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury as substantially impaired his mental responsibility for his acts. If you can find any of these matters then you will find a verdict of manslaughter and not of murder." The judge had put the case in the only way in which it could be put and it was not his duty to enter into metaphysical and philosophical distinctions between intellect and emotion. Appeal dismissed.

APPEARANCES: *Graham Swanwick*, Q.C., and *C. H. Durman* (*Registrar, Court of Criminal Appeal*); *R. K. Brown* (*Director of Public Prosecutions*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[2 W.L.R. 162**

Central Criminal Court

CRIMINAL LAW: EVIDENCE: ADMISSION: INDUCEMENT

R. *v.* Joyce

Slade, J. 11th November, 1957

Preliminary point on a trial on indictment.

On Sunday, 28th July, 1957, certain accusations were made to the police against the accused. At about 11.30 p.m. two police officers visited the accused at his home, and although he had retired to bed they nevertheless invited him to accompany them to the police station, one of them saying: "I need to take a statement from you." The accused, thinking he had little choice in the matter, accompanied the police to the police station; there he made a written statement which was alleged to contain an admission. At his trial the defence contended that such an admission was inadmissible, being obtained by reason of an inducement held out to the accused.

SLADE, J., said that the question was whether the remark made by the police was a sufficient inducement in law to exclude any admission thereafter alleged to have been made by the accused. If a person made a statement after being told: "I need to take a statement from you," then obviously some inducement, in the colloquial sense, was held out to make it; but an inducement of that nature was not a sufficient inducement in law to render inadmissible a statement resulting from it. To render a confession or admission admissible the prosecution must prove affirmatively that no inducement *relating to the charge or accusation* was held out to the accused to make it. A confession or admission must be excluded if it is made (i) in consequence of (ii) any inducement; (iii) of a temporal character; (iv) connected with the accusation or relating to the charge; (v) held out to the accused by a person having some authority over the subject-matter of the charge or accusation. In the present case the words under consideration or even words covering a suggestion that the person would have to come to the station because the police needed to take a statement from him when they got there was not an inducement in any way relating to the charge or accusation. Evidence was, therefore, admissible of the admission alleged to have been made by the accused.

APPEARANCES: *J. H. Buzzard* and *John Worsley* (*Director of Public Prosecutions*); *A. S. Wells* (*A. A. Kassman*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 140**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

All Hallows the Great Churchyard Bill [H.L.] [22nd January.
All Hallows the Less Churchyard Bill [H.L.] [22nd January.
Angle Ore and Transport Company Bill [H.L.] [22nd January.
Ashton under Lyne, Stalybridge and Dukinfield (District) Waterworks Bill [H.L.] [22nd January.
Blackpool Corporation Bill [H.L.] [22nd January.
Brazilian Traction Subsidiaries Bill [H.L.] [22nd January.
Cammell Laird and Company Bill [H.L.] [22nd January.
City of London (Various Powers) Bill [H.L.] [22nd January.
Clergy Orphan Corporation Bill [H.L.] [22nd January.
Coventry Corporation Bill [H.L.] [22nd January.
Falmouth Harbour Bill [H.L.] [22nd January.
Isle of Man Bill [H.C.] [22nd January.
Kent County Council Bill [H.L.] [22nd January.
London County Council (General Powers) Bill [H.L.] [22nd January.
New Towns Bill [H.C.] [22nd January.
Rochdale Corporation Bill [H.L.] [22nd January.
Seaham Harbour Dock Bill [H.L.] [22nd January.
South Lancashire Transport Bill [H.L.] [22nd January.
Surrey County Council Bill [H.L.] [22nd January.
Tyne Improvement Bill [H.L.] [22nd January.
Waltham Holy Cross Urban District Council Bill [H.L.] [22nd January.

Read Second Time:—

Housing (Financial Provisions) Bill [H.L.] [23rd January.
Recreational Charities Bill [H.L.] [21st January.
Trustee Savings Banks Bill [H.C.] [21st January.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Commonwealth Institute Bill [H.C.] [22nd January.
To amend the law with respect to the Imperial Institute.

Land Powers (Defence) Bill [H.C.] [23rd January.
To provide for the termination of certain emergency powers and to make certain provision in substitution therefor; and for purposes connected with the matters aforesaid.

Litter Bill [H.C.] [22nd January.
To make provision for the abatement of litter.

Read Second Time:—

Cayman Islands and Turks and Caicos Islands Bill [H.C.] [21st January.
Double Death Duties Bill [H.C.] [24th January.
Local Government (Omnibus Shelters and Queue Barriers) (Scotland) Bill [H.C.] [24th January.
Opencast Coal Bill [H.C.] [22nd January.
Overseas Service Bill [H.C.] [21st January.

In Committee:—

Post Office and Telegraph (Money) Bill [H.C.] [21st January.

B. QUESTIONS

BUILDING SOCIETIES (PREMIUMS)

The CHANCELLOR OF THE EXCHEQUER stated that legislation relating to the practice of building societies in charging premiums on mortgage advances was not contemplated. [21st January.

HOUSING ACT, 1957, s. 67

Asked (1) what was his policy with regard to orders under s. 67 (1) of the Housing Act, 1957, in view of the fact that in recent cases he had made such orders only in very special circumstances, and (2) whether, to reduce hardship to owners of land who opposed clearance and other orders under s. 67 of the Housing Act, 1957, he would make a wider use of his discretion in respect of allowance of expenses, the MINISTER OF HOUSING AND LOCAL GOVERNMENT replied that it was not the practice to award costs against local authorities carrying out statutory duties unless they had misconceived the duty or acted unreasonably or vexatiously. The Lord Chancellor had undertaken that the question of awarding costs in administrative inquiries should be referred to the Council on Tribunals when it had been appointed. [21st January.

CAPITAL MURDER CONVICTION

The ATTORNEY-GENERAL said that he had no power to reconsider his decision to grant his fiat to J. S. Spriggs to appeal to the House of Lords against his conviction of capital murder. A case did not raise a point of law of exceptional public importance because it happened to be the first case under a particular provision of an Act. [23rd January.

COMMITTEE ON RATING OF CHARITIES

The MINISTER OF HOUSING AND LOCAL GOVERNMENT said that he had appointed Sir Fred Pritchard, M.B.E. (Chairman), Mr. L. Farrer-Brown, Sir Edward Ritson, K.B.E., C.B., Mr. G. D. Squibb, Q.C., and Professor R. C. Tress to be a Committee with the following terms of reference :—

"To review the present treatment for rating of hereditaments in England and Wales occupied for purposes of a charitable nature or for other similar purposes (other than hereditaments to which s. 7 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, applies) ; to consider in particular the provisions of s. 8 of the Act of 1955 and of the Scientific Societies Act, 1843 ; and to advise on the proper treatment for rating of the hereditaments within these terms of reference." [23rd January.

ARTIFICIAL INSEMINATION

Mr. BUTLER said that he was considering all the aspects of artificial insemination but was not yet in a position to make a statement. [23rd January.

STATUTORY INSTRUMENTS

Bethnal Green (Wards) Order, 1958. (S.I. 1958 No. 63.) 5d.
Draft **Cinematograph Films** (Distribution of Levy) (Amendment) Regulations, 1958. 5d.
County of Northampton (Electoral Divisions) Order, 1958. (S.I. 1958 No. 64.) 5d.
Exeter (Water Charges) Order, 1958. (S.I. 1958 No. 43.) 4d.
Great Ouse River Board (Waterbeach Level Internal Drainage District) Order, 1957. (S.I. 1958 No. 2251.) 5d.
London Traffic (Prescribed Routes) (Hendon) Regulations, 1958. (S.I. 1958 No. 76.) 4d.
Draft **Metropolitan Police** Staffs Superannuation Order, 1958. 5d.
National Assistance (Charges for Accommodation) (Scotland) Amendment Regulations, 1958. (S.I. 1958 No. 65 (S. 3).) 4d.
Northallerton Water Order, 1958. (S.I. 1958 No. 90.) 4d.
Patents Rules, 1958. (S.I. 1958 No. 73.) 2s. 10d. See p. 83, *ante*.
Police Pensions (Scotland) Regulations, 1958. (S.I. 1958 No. 56 (S. 2).) 6d.
Retention of Cables and Pipe Under Highways (County of East Suffolk) (No. 1) Order, 1958. (S.I. 1958 No. 29.) 5d.
Royal Irish Constabulary (Widows' Pensions) Regulations, 1958. (S.I. 1958 No. 101.) 5d.
Stopping up of Highways (County of Chester) (No. 1) Order, 1958. (S.I. 1958 No. 53.) 5d.
Stopping up of Highways (City and County Borough of Coventry) (No. 1) Order, 1958. (S.I. 1958 No. 37.) 5d.
Stopping up of Highways (County of Denbigh) (No. 1) Order, 1958. (S.I. 1958 No. 26.) 5d.
Stopping up of Highways (County of Durham) (No. 1) Order, 1958. (S.I. 1958 No. 67.) 5d.
Stopping up of Highways (County of East Suffolk) (No. 1) Order, 1958. (S.I. 1958 No. 36.) 5d.
Stopping up of Highways (City and County of the City of Exeter) (No. 1) Order, 1958. (S.I. 1958 No. 38.) 5d.
Stopping up of Highways (County of Gloucester) (No. 1) Order, 1958. (S.I. 1958 No. 31.) 5d.
Stopping up of Highways (County of Hertford) (No. 1) Order, 1958. (S.I. 1958 No. 32.) 5d.
Stopping up of Highways (County of Lancaster) (No. 1) Order, 1958. (S.I. 1958 No. 68.) 5d.
Stopping up of Highways (County of Lancaster) (No. 2) Order, 1958. (S.I. 1958 No. 39.) 5d.
Stopping up of Highways (County of Lancaster) (No. 3) Order, 1958. (S.I. 1958 No. 69.) 5d.
Stopping up of Highways (London) (No. 2) Order, 1958. (S.I. 1958 No. 70.) 5d.
Stopping up of Highways (London) (No. 3) Order, 1958. (S.I. 1958 No. 71.) 5d.
Stopping up of Highways (County of Middlesex) (No. 1) Order, 1958. (S.I. 1958 No. 27.) 5d.
Stopping up of Highways (County of Middlesex) (No. 2) Order, 1958. (S.I. 1958 No. 28.) 5d.
Stopping up of Highways (County of Northampton) (No. 1) Order, 1958. (S.I. 1958 No. 33.) 5d.
Stopping up of Highways (County of Southampton) (No. 3) Order, 1958. (S.I. 1958 No. 34.) 5d.
Stopping up of Highways (County of Stafford) (No. 1) Order, 1958. (S.I. 1958 No. 35.) 5d.
Stopping up of Highways (County of Worcester) (No. 2) Order, 1958. (S.I. 1958 No. 40.) 5d.
Tees Valley and Cleveland Water Order, 1958. (S.I. 1958 No. 44.) 1s. 8d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. Prices stated are inclusive of postage.]

NOTES AND NEWS

Honours and Appointments

Knighthoods have been conferred upon Mr. Justice GEOFFREY WALTER WRANGHAM, Mr. Justice HERBERT EDMUND DAVIES and Mr. Justice RICHARD EVERARD AUGUSTINE ELWES on their appointment as Judges of the High Court of Justice.

Personal Notes

Mr. Alan Hudson Hewlett, solicitor, of Maidenhead, was married recently to Miss Margaret Elizabeth Green, of Maidenhead.

Mr. Allan Hopewell, assistant clerk to the Bingley, West Riding, Justices since 1913, retired recently.

Dr. C. J. M. Matheson, principal medical officer at Brixton Prison, who has given evidence at 300 murder trials in the past twenty-eight years, is retiring. Tribute was paid to him recently, after he had given evidence in his last case at the Central Criminal Court, by Mr. Justice Cassels.

Miscellaneous

The third London Coffee Pot Club, to enable university graduates and young men and women in the professions to meet others of similar interests at a weekly At Home, is now open at the Y.W.C.A. Central Club, Great Russell Street, London. The weekly At Home will be held on Tuesday evenings.

AMALGAMATION OF HAMMERSMITH AND WESTMINSTER RENT TRIBUNALS

With effect from 1st February, 1958, the existing Rent Tribunal at Westminster is closed and amalgamated with the Hammersmith Tribunal. The office of the new tribunal will be at Rooms 408/410 South Block, Hythe House, Brook Green Road, London, W.6 ; telephone number RIVerside 4181, extensions 28 and 39.

DEVELOPMENT PLAN

(*See also p. 82, ante*)

ADMINISTRATIVE COUNTY OF LONDON DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 16th January, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Metropolitan Borough of Lambeth (in the area Mawbey Street, Thorne Road, Hartington Road, Lansdowne Gardens and Guildford Road). A certified copy of the proposals as submitted has been deposited for public inspection at The County Hall, Westminster Bridge, S.E.1 (Room 314A). A certified copy of the proposals has also been deposited for public inspection at Lambeth Town Hall, Brixton Hill, S.W.2. The copies of the proposals so deposited, together with copies or

relevant extracts of the plan, are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 10 a.m. and 4 p.m. Monday to Friday, 10 a.m. and 12 noon Saturday. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government at Whitehall, London, S.W.1, before 4th March, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the London County Council (reference LP/O.1) and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

OBITUARY

MR. C. V. CARLISLE

Mr. Charles Valentine Carlisle, solicitor, of Bedford Square, London, W.C.1, died on 19th January. He was admitted in 1912.

MR. C. O'MALLEY

Mr. Charles O'Malley, solicitor, of Old Broad Street, London, E.C.2, died on 23rd January, aged 82. He was admitted in 1903.

MR. J. B. O'SHEA

Mr. James Bernard O'Shea, solicitor, of Birmingham, died recently aged 46. He was admitted in 1939.

MR. L. A. OWENS

Mr. Llewelyn Arthur Owens, retired solicitor, of Rhyl, died on 22nd January, aged 80. He was admitted in 1915.

MR. G. E. REED

Mr. George Edward Reed, solicitor, of Old Broad Street, London, E.C.2, and Banstead, Surrey, died on 2nd January. He was admitted in 1929.

MR. R. ROBERTS

Mr. Raymond Roberts, solicitor, of Harrogate, died on 9th January, aged 70. He was admitted in 1920.

MR. E. E. R. ROBYNS-OWEN

Mr. Evan Eirwyn Robyns Robyns-Owen, solicitor, of Pwllheli, died on 15th January, aged 62. He was Coroner for South Caernarvonshire in 1928 and was admitted in 1924.

MR. L. H. SHELVEY

Mr. Leslie Henry Shelvey, deputy town clerk of Deal, died on 10th January.

MR. H. L. SPEAR

Mr. Henry Lawrence Spear, solicitor, of Plymouth, died on 28th December, aged 78. He was president of Plymouth Law Society in 1934 and was admitted in 1904.

MR. A. SUGDEN

Mr. Arthur Sugden, retired solicitor, of Nottingham, secretary and legal adviser to Boots, died on 23rd January. He was admitted in 1909.

MR. G. L. WATES

Mr. George Leslie Wates, solicitor, of Bolton Street, Piccadilly, London, W.1, died on 22nd January, aged 73. He was for many years chairman of the Woolwich Equitable Building Society. He was admitted in 1905.

MR. R. WEDD

Mr. Richard Wedd, a former Registrar of the High Court in Birmingham and Coventry, died recently at Stratford-on-Avon, aged 78. He was admitted in 1906.

LT.-COL. F. K. WINDEATT

Lt.-Colonel Francis Knowles Windeatt, solicitor, of Totnes, Devon, died on 19th January, aged 82. He was clerk to the Totnes justices for fifty-five years and was admitted in 1898.

SOCIETIES

THE LAW SOCIETY

The President of The Law Society, Mr. Ian D. Yeaman, gave a luncheon party on 27th January at 60 Carey Street, Lincoln's Inn. The guests were: The United States Ambassador; Lord Justice Morris; Brig. Sir Norman Gwatkin; Sir Harold Kent; Mr. W. M. Balch; Col. A. B. Pasmore; Sir Dingwall Bateson; Mr. W. O. Carter and Mr Thomas G. Lund.

The eighty-seventh annual meeting of the NEWCASTLE-UPON-TYNE INCORPORATED LAW SOCIETY, being also the 131st anniversary of its original institution, was held at the society's rooms, Newcastle-upon-Tyne, on 14th January, when the following officers were elected for the ensuing year: president: Mr. Wilfrid Humble Gibson; vice-president: Mr. Ralph Laverton Richmond; hon. treasurer: Mr. Stanley Grenville March; hon. secretary: Mr. Thomas Milnes Harbottle; and hon. librarian: Mr. Philip Standring Layne, and the following members were elected to the standing committee: Messrs. J. Atkinson, W. N. Craigs, H. C. Ferens, G. R. Hodnett, T. T. Houlsby, R. J. Middlemas, W. S. Mitcalfe, E. Richardson, G. Scott, H. L. Swinburne, A. B. Thompson and J. G. Thompson.

The society's annual dinner was held in the evening of the same day at the Old Assembly Rooms, Newcastle-upon-Tyne, when 384 members and their guests sat down to dinner. Among those present were Mr. Justice Finnemore, Mr. Justice Hinchcliffe, His Grace the Duke of Northumberland, Judge Cohen and the President of The Law Society, Mr. Ian D. Yeaman. The toast of "The Bench and Bar" was proposed by Mr. H. Cecil Ferens and replied to by Mr. Justice Finnemore, and the toast of "The Law Society" was proposed by Mr. W. N. Wade, and replied to by the President of The Law Society.

The next quarterly meeting of the LAWYERS' CHRISTIAN FELLOWSHIP will be held at The Law Society's Hall, Bell Yard, W.C.2, on Tuesday, 18th February, 1958, at 6.30 p.m. Tea will be available from 5.30 p.m. The meeting, to which all lawyers, law students and visitors are warmly welcomed, will be addressed by Mr. D. F. Ellison-Nash, F.R.C.S., Dean of the Medical College of St. Bartholomew's Hospital, on the subject of "The professional approach to human problems."

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Compensation for Road Injuries

Sir,—Mr. R. T. Oerton claims that motorists have a right of way superior to that of pedestrians on the roadway, and asks for an authority to the contrary. If I may say so, his attitude towards pedestrians seems to be completely unlawful, and I suggest that *Davies* v. *Mann* (1842) is not only good law but good sense. In that case the owner of a donkey, which was left hobbled on the highway, was held entitled to recover from a coachman who ran over the poor beast. "For otherwise," as the court said, "a driver might be excused for running over a drunken man lying in the road."

Drivers have no right to sentence foolish pedestrians to death, particularly when the foolish are very young or very old; nor must they suppose that their licences have purchased the roads of this country. The highways are not for sale.

My solution to the appalling problem of death on the road is to revive the ancient law of deodand, which incidentally was abolished as recently as the eighteen-thirties.

KENNETH F. SOLLOWAY.

Leicester.

"THE SOLICITORS' JOURNAL"

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